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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

SERVICE, HOSPITAL, NURSING HOME AND
PUBLIC EMPLOYEES UNION, LOCAL 47

Petitioner,

v.

COMMERCIAL PROPERTY SERVICES, INC.,
CLEVELAND CLEANING & MAINTENANCE CO.,
TOTAL SYSTEMS MANAGEMENT, INC.,
ANTARES, INC.
AND
FIRST UNION MANAGEMENT, INC.

Respondents.

On Writ of Certiorari to the United States
Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether related entities which an employer expressly agrees are employers under the Collective Bargaining Agreement should be required to arbitrate a dispute falling under that Agreement?

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I. QUESTIONS PRESENTED FOR REVIEW

Whether related entities which an employer expressly agrees are employers under the Collective Bargaining Agreement should be required to arbitrate a dispute falling under that Agreement?

Related entities which an employer expressly agrees are employers under the Collective Bargaining Agreement should be required to arbitrate a dispute falling under that Agreement.

Petitioner Service, Hospital, Nursing Home and Public Employees Union, Local 47 (hereinafter "Local 47") is a party to a Collective Bargaining Agreement of which Respondent Commercial Property Services, Inc. (hereinafter, "CPS") is a signatory. (Relevant portions of that Agreement are attached hereto and marked Exhibit "A".)

CPS agreed that parties to the Collective Bargaining Agreement, i.e., the "Employer" be defined as follows:

(Article XXI, Successors and Assigns Other Employers)

> ...This Agreement hereby covers as an Employer subject to the full terms of this Agreement any individual proprietorship, partnership, corporation, firm, or any other entity which is engaged in janitorial work and is in any way a subsidiary or related entity to any Employer covered by this Agreement. Specifically and without limitation, this Agreement hereby includes any entity engaged in janitorial work which is operated in whole or in part by any officer, director or any person employed by any Employer covered by this Agreement, and further includes any entity engaged in janitorial work in which any investor in any Employer covered by this Agreement has any interest of any kind...

Respondent Cleveland Cleaning and Maintenance Company (hereinafter, "CCM") fits the contractual definition of the Employer since it was partially (70%) owned by Patrick J. Cassese (hereinafter, "Cassese") an officer of CPS who owned one hundred percent (100%) of Antares, Inc. (hereinafter, "Antares"), which in turned owned one hundred percent (100%) of CPS. Respondent Antares fits the contractual

definition of the Employer since it owns CPS. Respondent Total Systems Management, Inc. (hereinafter, "TSM") fits the contractual definition of the Employer since it is one hundred percent (100%) owned by CPS.

Local 47 sought to have grievances filed under the Collective Bargaining Agreement arbitrated by CPS, CCM, Antares and TSM since they were by definition the Employer under the Collective Bargaining Agreement.

The Sixth Circuit Court has held that CCM, Antares and TSM could only be required to arbitrate if the Court finds that there should be a piercing of the corporate veil on an alter ego theory or otherwise at law.

Local 47 would have this Court require that the parties arbitrate so long as they fit the contractual definition of the Employer as agreed by the parties. Since the undisputed findings of the District

Court establish the ownership and control of CPS, CCM, Antares and TSM, and thus, their status as Employers under the Collective Bargaining Agreement, such entities must be ordered to arbitrate.

II. JURISDICTION

This matter arose under Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185, as an action to enforce a collective bargaining agreement.

This Petition for Writ of Certiorari requests this Court to review the order of the United States Court of Appeals for the Sixth Circuit in Case Numbers 83-3761, 83-3762 and 83-3788 decided and filed on February 21, 1984 which vacated the decision of the United States District Court for the Northern District of Ohio, Eastern Division, which has required CCM to arbitrate a grievance with Local 47 and which upheld the decision of the District Court in dismissing Antares and TSM. No motion for reconsideration was filed. An application for an extenstion of time in which to file a Petition for Writ of Certiorari was filed on May 21, 1985 (formally resubmitted on May 31, 1985).

An order extending time to file a Petition for Writ of Certiorari was granted on June 4, 1985 which extended the time for filing this Petition to June 21, 1985.

Jurisdiction of this Court is invoked under Supreme Court Rule 17.1 (c) in that the United States Court of Appeals for the Sixth Circuit had decided an important question of Federal Law which should be settled by this Court, the question of whether related entities which an employer expressly agrees are employers under the Collective Bargaining Agreement should be required to arbitrate a dispute falling under that Agreement.

The decision of the Sixth Circuit is in conflict with the decisions in United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960), United Steelworkers of American v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960) and United Steelworkers of America v. Enter-

prise Wheel & Car Corp., 363 U.S. 593 (1960).

III. RELEVANT STATUTES

Section 203 (d) of the National Labor Relations Act, 29 U.S.C. §173 (d):

Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

Section 301 of the National Labor Relations Act, 29 U.S.C. §185:

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose

activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

IV. STATEMENT OF THE CASE

Petitioner Local 47 and CPS were parties to a Collective Bargaining Agreement effective May 1, 1981 through April 30, 1984. CPS is a company which provides janitorial (cleaning) services at numerous locations (accounts). CPS and a number of other cleaning contractors execute identicle collective bargaining agreements with Local 47 under which any Employer covered by the Agreement taking over an account previously serviced by another Employer covered by the Agreement is required to retain the previous Employer's employees at the same wages, terms and conditions of employment and hours of work and to recognize the seniority of those employees[1/]. (A copy of the rele-

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[1/] (See Master Agreement, Article XI, Sections 1, 2, 5 and 8.)

vant portions of said Collective Bargaining Agreement, hereinafter referred to as the "Master Agreement", is attached hereto and marked Exhibit "A".) CPS was also covered by a Collective Bargaining Agreement (hereinafter referred to as the "Downtown Building Agreement") which contained a Work Preservation clause which states:

> If an Employer signatory to an agreement with the Union takes over the operation of the janitorial and/or maintenance work in a building or buildings covered by this Agreement, the employees performing that work shall be retained in order of their building seniority and in accord with the wages, hours, and other terms and conditions of employment established in this Agreement.

The Collective Bargaining Agreement was executed by CPS on behalf of its successors, assigns and related entities and defined as the Employer covered by the Agreement such related entities. (See Article XXI, Successors and Assigns, Other Employers, Exhibit "A".)

Signatory CPS was owned by Antares which in turn was owned by Cassese, an officer of CPS. Cassese also owned seventy percent (70%) of CCM.

During the term of the Collective Bargaining Agreement and prior to Local 47's knowledge of the relationship between CPS and CCM, CCM took over a number of accounts serviced by contractors covered by the Master Agreement; the Lakeland Medical Building, the Young Medical Building, the Shaker Medical Building, Curtis Industries and Diamond Shamrock.

In February of 1983, Local 47 became aware of the relationship between CPS and CCM and also became aware that CCM would begin servicing two accounts operated by First Union Management (hereinafter, "First Union"), the Illuminating Building and the Rockwell Building. These accounts had been serviced by National Cleaning, a signatory to the Master Agreement.

Local 47 thereupon filed a grievance in the form of a letter (attached hereto and marked Exhibit "B") alleging a violation of Articles XI and XXI of the Master Agreement and/or the Work Preservation article of the Downtown Building Agreement. The letter informed the Employer that unless it agreed to restore the former employees to employment and otherwise honor its Collective Bargaining Agreement, Local 47 would seek injunctive relief and would week arbitration of the dispute.[2/]

When CCM failed to comply wi.h the directions in the grievance letter, Local 47 filed suit against CPS, CCM, Antares, TSM and First Union[3/] in the United States District Court for the Northern District

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[2/] See Article XXVIII of the Master Agreement, Remedies.

[3/] First Union was joined for injunctive purposes and under a cause of action for malicious interference with contract. (See Plaintiff's Second Cause of Action.)

of Ohio, Eastern Division pursuant to Section 301 of the Labor-Management Relations Act, 29 U.S.C. §185. (A copy of Local 47's Complaint as amended is attached hereto and marked Exhibit "C".)

Local 47 moved for Summary Judgment on its Complaint; CCM moved for Partial Summary Judgment; Antares and TSM filed Motions to Dismiss.

Local 47's Motion for Summary Judgment was granted to the extent that CPS and CCM were ordered to arbitrate but granted Antares and TSM's Motion to Dismiss. (See Memorandum and Order of the District Court included in the Appendix hereof.)

CPS and CCM appealed the decision of the District Court in ordering CCM to arbitrate. Local 47 cross-appealed from the decision of the District Court

to dismiss Antares and TSM.

The United States Court of Appeals for the Sixth Circuit vacated the decision of the District Court which ordered CCM to arbitrate saying, "We hold that a district court may not order a non-signatory to arbitrate a labor dispute absent a specific finding that the relationship between it and the party bound to the agreement is such that it too is bound... We, therefore, vacate the order of the district court and remand the case to it for a determination of whether the facts warrant a finding that CCM and CPS are alter egos or constitute a single Employer or whether the corporate veil should otherwise be pierced".

The Sixth Circuit Court further

upheld the District Court's dismissal of Antares and TSM.[4/]

The Sixth Circuit thus held that there must be a finding of alter ego or single-employer status generally at law to bind a non-signatory employer to arbitrate even where the Collective Bargaining Agreement defines that related entity as the Employer.[5/]

Petitioner believes that where an

[4/] The Sixth Circuit Court also upheld the District Court's denial of CCM's Motion for Partial Summary Judgment indicating that Local 47, since discovery had not been completed, had not had the opportunity to present evidentiary support for its alter ego single-employer theory.

[5/] It is interesting to note that the case cited in support of the Sixth Circuit Court's decision, American Bell v. Federation Telephone Workers, 736 F. 2d 879 (3rd Cir. 1984) was a split decision of the Court. The dissent would have required arbitration and the majority remanded noting that the contract definition was unclear.

employer signatory to a Collective Bargaining Agreement agrees that certain related entities are also bound by the Collective Bargaining Agreement, such related entities should be required to arbitrate a dispute under the Collective Bargaining Agreement, "unless it can be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute", United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960).

V. ARGUMENT

There is nothing more important to Federal labor policy than the existence of a functioning labor arbitration system.

It is so important that Congress has seen fit to express the National policy favoring arbitration as a matter of law in Section 203 (d) of the National Labor Relations Act, 29 U.S.C. §173 (d):

> Final adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

This Court likewise has expressed its policy toward favoring arbitration in the Steelworkers Trilogy; United Steelworkers of America v. American Manufacturing Co., 363 U.S. 564 (1960), United Steelworkers of America v. Warrior & Gulf

Navigation Co., 363 U.S. 574 (1960) and United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). This Court expressly stated in Warrior & Gulf, supra, "The grievance machinery is at the very heart of the system of industrial self-government" (363 U.S. 574 at 581). The message of the Steelworkers' cases is clear; arbitration is a system of industrial self government under which parties bargain for a decision by an arbitrator based on the terms of their agreement, not on some body of law external to that document. The Sixth Circuit Court would have the external body of law, the doctrine of successorship, alter ego and piercing of the corporate veil prevail over the Collective Bargaining Agreement requiring a finding at law on these issues before arbitrating a dispute falling within the Collective Bargaining Agreement. This holding flies

in the face of the Steelworkers' cases.

Under the Steelworkers' cases, if a party claimed that there was a violation of a collective bargaining agreement, an arbitrable issue was created. In American Manufacturing, supra, the test was stated clearly and unequivocably.

"The Union claimed in this case that the Company had violated a specific provision of the contract. The Company took the position that it had not violated that clause. There was, therefore, a dispute as to 'the meaning, interpretation and application' of the Collective Bargaining Agreement. Arbitration should have been ordered". (363 U.S. 564 at 569)

The effect of the decisions in the Steelworkers' cases was dramatic. This Court did not just decide three cases; it changed in one bold swoop the entire system of handling grievances across the nation.

Where a party could, with impunity, resist arbitration through obstinance or protracted appeal, that avenue was no longer generally available.

Before the Steelworkers' cases, a party demanding arbitration from an unwilling party could expect to fact a full adjudicatory hearing in the Federal Courts and an appeal from that determination. The resisting party could create an issue requiring a full hearing in the Court by simply stating, "The meaning of the language of the Collective Bargaining Agreement is beyond dispute". The Steelworkers' cases put an end to that ploy by taking the question of the merits of the controversy out of the hands of the Courts recognizing that allowing the Courts to determine the merits of an arbitration "could only have a crippling effect on grievance arbitration", American Manufacturing, 363 U.S. 564 at 567.

Allowing the Courts to hear the merits of arbitration had, in fact, crippled grievance arbitration. The projected cost of a procedure where the courts would be able to hear the merits of any arbitration would easily dissuade or destroy the party seeking to vindicate its rights.

Cost alone was not the only problem. The delay occasioned by such a procedure could destroy the entire collective bargaining process as decisions would be rendered long after the collective bargaining agreements under which they arose expired. (The case, the subject of this Petition for example, relates to decisions of the District Court on Motions for Summary Judgment concerning a grievance filed in 1983.) Further, prior to the Steelworkers' cases, during the interim between the filing of the grievance and final adjudication in the Courts, a lack

of confidence or disenchantment with the arbitration process could develop and could lead to the result Congress most wanted to avoid; labor strife.

This Court is quite aware that "arbitration is the substitute for labor strife", Warrior & Gulf, 363 U.S. 574 at 578.

After the Steelworkers' cases, the burdens of money and time were all but eliminated. A party seeking arbitration could expect the prompt granting of a Motion for Summary Judgment based on nothing more than a short memorandum and an affidavit, a relatively inexpensive proposition.

The result in such cases would be pre-ordained in light of this Court's admonishment that "an order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation

that covers the asserted dispute. Doubts should be resolved in favor of coverage". Warrior & Gulf, supra, at 583.

Parties resisting arbitration were foreclosed from protracting litigation by arguing the merits of the grievance and were severely burdened in prevailing on the remaining issue of procedure arbitrability.

In most cases, parties ceased to resist arbitration. Where parties did resist to the point of facing suit, a result was obtained at a bearable expense, in a reasonable time in such a manner to vindicate the arbitral process. Where parties resisted beyond the Summary Judgment stage, they ran the risk of facing sanctions under Rule 11 of the Federal Rules of Civil Procedure.

The beauty of the Steelworkers' cases was the fact that they were nearly

self policing. This Court gave direction in an important federal area, closing a door to those who could resist arbitration. With the door closed once and for all, parties to collective bargaining agreements were channelled into arbitration, the method Congress favored for dispute resolution.

The case presented for review today asks this Court to give the same type of direction to the parties to collective bargaining agreements across the nation, at the same time to vindicate its decision in the Steelworkers' cases and to reenforce the Congressional policy in favor of arbitration.

Here, CPS cannot legitimately claim that CCM, Antares and TSM are not covered by the express language of the Collective Bargaining Agreement. CPS essentially claims that those entities which it agreed were bound as employers to the Collective

Bargaining Agreement need not arbitrate the grievance because they are not signatories to the Agreement.

The fact of an Employer being or not being a signatory to a collective bargaining agreement has never been the determining factor. The question is whether the successor undertook the obligations of the contract. See John Wiley and Sons v. Livingston, 376 U.S. 543 1964.[6/] Wiley stands for the proposition that once an entity undertakes the obligations of a collective bargaining agreement, it becomes bound to the arbitration clause. It is clear here that the related entities of CPS undertook the obligations of the Collective Bargaining Agreement expressly by negotiation and under Wiley should be bound to arbitrate.

[6/] Note, there was no successorship clause in the collective bargaining agreement in Wiley.

Obviously, the Respondent will cite Howard Johnson Co., Inc. v. Detroit Joint Local Executive Board, Hotel & Restaurant Employees & Bartenders International Union, AFL-CIO, 417 U.S. 249 (1974) for the proposition that CCM, Antares and TSM should not be bound claiming that there was "no substantial continuity of identity in the business enterprise" between CPS and its three related companies.

If one looks closer, however, at the decision in Wiley and Howard Johnson's, one can see that the two decisions are completely consistent in saying that the duty to arbitrate arises from the existence of either of two factors; the "substantial continuity of identity in the business enterprise" or the Collective Bargaining Agreement itself. Wiley states at page 551:

> "There may be cases in which the lack of any substantial continuity of identity in the business enterprise before and after a change would make the duty to arbitrate something imposed from without, not reasonably, to be found in the particular bargaining agreement and the acts of the parties involved." (Emphasis supplied)
>
> (376 U.S. 543 at 551)

In other words, under Wiley, if the Collective Bargaining Agreement itself is not expressly a source of the duty to arbitrate, that duty might be found to exist by implication due to a "substantial continuity of identity". Howard Johnson's again stressed as in Wiley that a lack of substantial continuity of identity and an absence of an agreement to arbitrate relieved the entity from the duty to arbitrate:

> Since there was plainly no substantial continuity of identity in the work force hired by Howard Johnson's with that of Grissom's and no express or implied assumption of the agreement to arbitrate, the courts below erred in compelling the company to arbitrate... 417 U.S. 249 at 264 (Emphasis supplied)

Both the District Court and the Sixth Circuit Ccurt have overlooked the fact that there are two separate grounds for holding a non-signatory liable to arbitrate a dispute under a collective bargaining agreement in Wiley and Howard Johnson's; 1) the aspects of alter ego on substantial continuity of business enterprise which arise as a matter of law, and 2) the assumption of the duties of the Collective Bargaining Agreement which arises as a matter of contract.

Local 47's suit to compel arbitration seeks to compel CCM, Antares and TSM to arbitrate on both theories; that the contract by agreement of the parties binds them, and that as alter egos they are bound as a matter of law. Both courts focus on the rights arising outside of the Collective Bargaining Agreement seeking to find the non-signatory liable as a matter of general law rather than as a

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Security Act of 1974 which contains pro-

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workers, cases, Congress has seen fit

as do actuarial risks. Since the Steel-

the relative costs of administration rise,

numbers of employees covered decline,

as employees and Unions,[8] must await the full adjudicatory process to answer the question of contract coverage when the answer lies before them in the Collective Bargaining Agreement, the chance to enforce that adjudication once established decimates. Even if satisfied in full at a later date, the cost of litigation to the funds and the loss of the actuarial base can destroy the funds and with them the employees, leaving all with rights but no remedies. Thus, the initial barrier are not just employees disbanded by the glass ceiling, but employees confronted to work for the standstory. All are left with a violation of their rights, but no effective remedy.

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[8] With the economics of scale, jointly trusteed funds can provide benefits at a lower cost. Employers under funds can be more competitive in pricing labor and in providing services.

at 529, Note 2.

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This Court, even in Howard Johnson's,

If the standstorv to the Collective Bar-

dgining Agreement does out of business,

there may well be nothing out of which

to satisfy a judgment. Insured parties

navind a right without a remedy is not

a risk, but nearly a certainty in the

service industry. A company competing

with itself would want the most profitable

enterprise to prevail. To believe that

companies like CBS could win even a legiti-

mate battle with CCM would be like bracing

a pet on a shadow boxing match.

A corollary problem in the service

industry is that there is nearly no barrier

to entry. The cost of setting up an alter-

ego is practically nil. (Noteworthy in

this regard is the fact that seventy per-

cent of CCM was acquired for Three Hundred

Fifty Dollars of risk capital. See

page 13 of the transcript of proceedings

before Judge Bell in the United States

bertifive circumstances.
based on a particular set of com-
Masters Agreement who entered the
Collective Bargaining Agreement
but the Employer signatory to the
not only the Union and the employees,
The parties in this case include

10\ We believe that CPS was not
careful enough.

11\ The parties in the service industry, the parties, 11\ remedies generally of law, in an effort

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and marked Exhibit "D".)

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page 818 of the Joint Appendix before

of Ohio, Eastern Division, found of

District Court for the Northern District

to establish their own system of industrial self-government designed a collective bargaining agreement so that the problem of related entities could be dealt with promptly and inexpensively without labor strife.

It this Court direct direction that cases such as the one at hand will be given Greelmorkers, treatment, the problem of after ecpo may tend to disappear from the scene as collective bargaining agreements are negotiated and drafted to provide arbitration. A decision here may have the same self-pollicing result as did the Greel-workers, cases. Those who might otherwise have registered arbitration might cease to resist and those who might otherwise have been inclined to use

[15] Note that labor organizations
are service enterprises and,
thus, a potential for "reciprocal
agreements" certainly exists with
affiliate organizations.

This Court, like Congress, is cer-
tainly bound by resolution through the
contract.

It this Court declines to give
direction, parties to collective bar-
gaining agreements: employees, employers
and unions, will have to seek other
remedies. If the Courts do not provide
justice effectively, justice will be
found elsewhere. If will be found either
through the bermissible, through disfavored,
economic battle of wills or otherwise.
The "otherwise" is more likely since a
strike against the other ego might be
enjoined bending resolution through the
courts.

[15] ~~Note~~ wight be encountered not
to do so.

matter of contract.

The fact that the argument of Local 47 relating to the rights under the contract was missed by the Sixth Circuit Court is found in that Court's reliance on American Bell, Inc. v. Federation of Telephone Workers of Pennsylvania, 736 F. 2d 879 (3rd Cir. 1984).

The Sixth Circuit cited American Bell, supra, for the proposition that the Federal Court must make a determination of whether an entity is bound to a collective bargaining agreement as a matter of law before arbitration will be compelled. The Sixth Circuit takes it that the determination must be made on the basis of a sham corporation or alter ego theory. While the Sixth Circuit notes that the Seventh Circuit remanded the case to the District Court in American Bell, it does not go on to determine why the case was remanded.

Looking carefully at American Bell, we find that the reason the case was remanded was that the Circuit Court could not determine that the lower court had found that the company was a party by definition of the Collective Bargaining Agreement.

The Collective Bargaining Agreement in American Bell required the employer to secure the assent of any "successor organization" that the Collective Bargaining Agreement between the Employer and the Union would continue in effect and bind that successor organization.

The company in American Bell had argued in the lower court that "successor organization" meant a "successor" as defined at law. The Union, however, argued that the definition of successor organization included all related transferees.[7/]

[7/] Note again that we do not have any definitional problem or argument

The Court of Appeals in American Bell was concerned with the contract definition of successor organization but could not determine the lower court's interpretation:

> The resolution of the dispute about the interpretation of successor organization in the present case depends on the intent of the parties, a question of fact. We may infer from the district court's ruling that it concluded ABI was a successor organization. Without an adequate record and articulation of factual findings, however, we cannot review that conclusion 736 F. 2d 879 at 885

The Seventh Circuit later in its opinion discarded completely the theory of binding American Bell on the issue of successorship at law but again reinforced its direction to consider the Collective Bargaining Agreement, itself, as a source of a duty to bind the related entity:

> in this case since "related entities" is exhaustively defined in the Collective Bargaining Agreement.

> We simply hold that the Union may not use the successor doctrine to bind ABI to the bargaining agreement with regard to the transferred assets. We do not hold that ABI is not a "successor" within the meaning of federal labor law. Although normally the question of ABI's status as a successor would not be relevant once the doctrine itself had been found to be inapplicable, in the present case ABI's status as a successor may also be relevant to a determination of ABI's obligations on the basis of paragraph 12 of the Memorandum of Agreement. *See supra at p. 885.* The district court will be free on remand to consider this issue. (Emphasis supplied) 736 F. 2d 879 at 888

The Third Circuit Court finally discarded the single enterprise and alter ego theories completely as a reason to bind the related entity leaving the contract theory the only issue on remand:

> We therefore conclude that ABI is not obligated to arbitrate its grievances with the Union under the collective bargaining agreement on the basis of some extra-contractual theory of federal law. If arbitration is required, it must be because such an obligation has been imputed to ABI on the basis of the Memorandum of Agreement. The order of the District Court will be reviewed and this action will be remanded for further proceedings consistent with this opinion. [id at 889]

What the Sixth Circuit Court seems to have missed in reading American Bell is that if a non-signatory related entity cannot be bound by the contract, then there would have been nothing left to consider on remand in American Bell. If the contract theory could not apply, American Bell would have been reversed and remanded with directions to dismiss the action. Instead, the Third Circuit gave the District Court express directions to consider the Collective Bargaining Agreement and make its findings clear.

The remand, as in the case at hand, would not have happened in the Third Circuit since there is no question as to the meaning of the term "related entity" as it applies to CCM, Antares and TSM.

The Sixth Circuit has ordered a remand where none was necessary and remanded the case without even mentioning the

meaning of the Collective Bargaining Agreement; the agreement of the parties.

Unfortunately, the Sixth Circuit has strayed from the teachings of the Steelworkers' cases that arbitration is a system of industrial self government. It has ignored the fact that arbitration is the substitute for labor strife and that, therefore, judgments and final settlements must come quickly in a manner only arbitration can provide.

Today, more than ever, it is necessary that direction be given by this Court that when a party to a collective bargaining agreement specifically agrees that its related entities are bound to the Collective Bargaining Agreement, an arbitration of a dispute with the related entity will be ordered to arbitration.

The reasons for such direction are exactly those which existed prior to the

Steelworkers' cases. The remedies at law are inadequate to avoid inequity and industrial strife. Just as in the Steelworkers' cases, the costs to obtain judgments are too great in most cases and the delays are such as to render even victories hollow.

Since the Steelworkers' cases of twenty-five years ago, the nature of collective bargaining agreements and the nature of the work force make direction of this Court even more vital.

Today, collective bargaining agreements often contain jointly trusteed health & welfare and pension plans, like those in the Collective Bargaining Agreement between Local 47 and CPS. (See Articles IX and XII of the Master Agreement, Exhibit "A".)

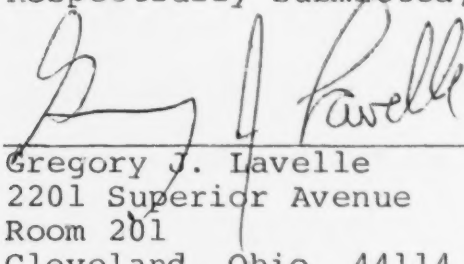
These funds have a definite interest in maintaining their actuarial base. As

tainly aware of the potential problems involved with labor strife. The National Labor Relations Act obviously did not come about as a result of smooth sailing in the relationship between labor and management through the 1930's. Congress created the National Labor Relations Act in 1934 to establish the Federal Policy of peacefully resolving labor disputes. Twenty-six years later, this Court found it necessary, in the Steelworkers' cases, to make sure that the machinery of resolving labor disputes could function in the industrial setting. Another twenty-six years has almost passed, and now we believe it necessary that this Court again give direction so that the arbitration system can function effectively in today's service related economy.

IV. CONCLUSION

For the above reasons, this Court should grant the Petition for Certiorari to hear Petitioner's claim that related entities which an Employer expressly agrees are employers under the Collective Bargaining Agreement should be required to arbitrate a dispute falling under that Agreement.

Respectfully submitted,



Gregory J. Lavelle
2201 Superior Avenue
Room 201
Cleveland, Ohio 44114
(216) 621/0995

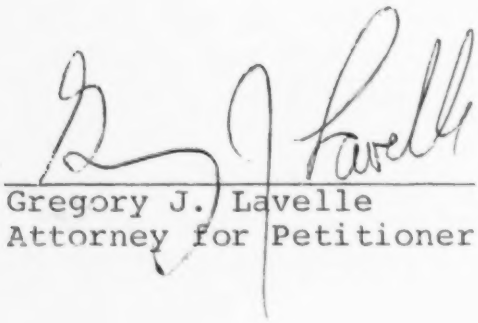
Counsel for Petitioner

CERTIFICATE OF SERVICE

Copies of the within Petition for Writ of Certiorari were served upon Respondents Commercial Property Services, Inc., Antares, Inc. and Total Systems Management, Inc. c/o Robert T. Rosenfeld, Esquire, Walter, Haverfield, Buescher & Chockley, 1215 Terminal Tower, Cleveland, Ohio 44113; Respondent Cleveland Cleaning and Maintenance Company c/o Gregory P. Szuter, Esquire, Schwartz, Einhart & Simerka, 800 National City Bank Building, Cleveland, Ohio 44114; and Respondent First Union Management, Inc. c/o Keith Ashmus, Esquire, Thompson, Hine and Flory, 1100 National City Bank Building, Cleveland, Ohio 44114 and c/o Daniel K. Wright, II, Esquire, 55 Public Square, Suite 1900, Cleveland, Ohio 44113 on this 22nd day of July, 1985 by depositing same in the United States

Regular Mail, First Class, Postage

Pre-paid.



Gregory J. Lavelle
Attorney for Petitioner

VII. APPENDIX

Part A

JUDGMENT AND ORDER of the United States Court of Appeals for the Sixth Circuit, Case Nos. 83-3761, 83-3762 and 83-3788

MEMORANDUM AND ORDER of the United States District Court, Northern District of Ohio, Eastern Division, Case No. C83-588

Part B

Exhibit "A" - Relevant portions of Master Agreement pp. A-1 to A-17

Exhibit "B" - Local 47's Grievance (in letter form) pp. B-1 to B-3

Exhibit "C" - Local 47's Complaint as amended pp. C-1 to C-21

Exhibit "D" - Page 61 of the transcript of proceedings before Judge Bell in the United States District Court for the Northern District of Ohio, Eastern Division, found at page 618 of the Joint Appendix before the Sixth Circuit Court pp. D-1 to D-2

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NOS. 83-3761
83-3762
83-3788

SERVICE, HOSPITAL, NURSING HOME AND PUBLIC EMPLOYEES UNION, LOCAL NO. 47, affiliated with the SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC

Plaintiff-Appellee,
Cross Appellant,

v.

COMMERCIAL PROPERTY SERVICES, INC., and CLEVELAND CLEANING & MAINTENANCE COMPANY,

Defendants-Appellants,
Cross Appellees,

and

TOTAL SYSTEMS MANAGEMENT, INC,, ANTARES, INC., and FIRST UNION MANAGEMENT, INC.

Defendants,
Cross Appellees.

e: ENGEL and WELLFORD, Circuit Judges; and ROSENN, Senior Circuit Judge.

J U D G M E N T

ON APPEAL from the United States District Court for the Northern District of Ohio.

THIS CAUSE came on to be heard on the record from the said District Court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this court that the judgment of the said District Court in this case be and the same is hereby affirmed in

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part and the case is remanded for further proceedings not inconsistent with this opinion.

It is further ordered that in case 83-3761, each party is to bear its own costs in this appeal. It is further ordered that in case 83-3762, the Appellees recover from Appellants the costs on appeal as itemized below. It is further ordered that in case 83-3788, the Cross Appellees recover from Cross Appellant the costs on appeal, as itemized below. Execution therefor shall issue out of said District Court, if necessary.

A TRUE COPY

Attest:

By_____
Deputy Clerk

ENTERED BY ORDER OF
THE COURT

John P. Hehman, Clerk

/s/ John P. Hehman

Nos. 83-3761
83-3762
83-3788

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SERVICE, HOSPITAL, NURSING HOME AND PUBLIC EMPLOYEES UNION, LOCAL NO. 47, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UION [sic], AFL-CIO, CLC,	:
Plaintiffs-Appellees, Cross-Appellants,	:
vs.	: O R D E R
ANTARES, INC.; TOTAL SYSTEMS MANAGEMENT INC.; FIRST UNION MANAGEMENT, INC.,	:
Defendants-Appellees.	:
COMMERCIAL PROPERTY SERVICES, INC., ET AL.,	:
Defendants,	:
CLEVELAND CLEANING & MAINTENANCE COMPANY,	:
Defendant-Appellant, Cross-Appellees.	:

Upon consideration of the motions of the parties to the appeal and cross-appeals herein to enlarge the oral argument time by

an additional fifteen minutes,

IT IS ORDERED that the motions be, and they hereby are granted.

ENTERED BY ORDER OF THE COURT

John P. Hehman, Clerk

/s/ John P. Hehman

RECOMMENDED FOR FULL TEXT PUBLICATION

See, Sixth Circuit Rule 24

Nos. 83-3761, 83-3762, 83-3788
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

SERVICE, HOSPITAL, NURSING HOME AND PUBLIC EMPLOYEES UNION, LOCAL NO. 47, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC, Plaintiff-Appellee, Cross-Appellant,	)	
v.	)	ON APPEAL from the United States District Court for the Northern District of Ohio, Eastern Division.
COMMERCIAL PROPERTY SERVICES, INC., AND CLEVELAND CLEANING & MAINTENANCE COMPANY, Defendants-Appellants, Cross-Appellees,	)	
and	)	
TOTAL SYSTEMS MANAGEMENT, INC., ANTARES, INC., AND FIRST UNION MANAGEMENT, INC., Defendants, Cross-Appellees.	)	

Decided and Filed February 21, 1985

Local No. 47 v. Commercial Property
Nos. 83-3761, etc.

Before: ENGAL and WELLFORD, Circuit Judges; and ROSENN, Senior Circuit Judge.°

ROSENN, Senior Circuit Judge. The novel and underlying issue raised in these proceedings is whether a non-signatory to a collective bargaining agreement who does not stand in a successor relationship to a signatory to the agreement or to its work force can be bound by the grievance and arbitration provisions of that contract. In a suit brought by Service, Hospital, Nursing Home and Public Employees Union, Local No. 47, affiliated with the Service Employees International Union, AFL-CIO, (Local 47 or Union), under section 301 of the Labor Management Relations Act, 29 U.S.C. §185 (1982), Local 47 alleged that the defendant, Commercial Property Services (CPS) through its alter ego, Cleveland Cleaning and Maintenance Co. (CCM) breached a collective bargaining agreement with Local 47. The complaint alleged that the employer violated the collective bargaining agreement by hiring non-union employees to work at several Cleveland buildings, operated by First Union Management Co. (First Union). The district court granted Local 47's motion for summary judgment and ordered CPS and CCM to arbitrate. The court denied Local 47's request for injunctive relief and dismissed First Union and two companies related to CPS. We affirm in part and reverse in part.

°Honorable Max Rosenn, Senior United States Circuit Judge for the United States Court of Appeals for the Third Circuit, sitting by designation.

I.

Local 47 has been a party to a series of collective bargaining agreements with the defendant, Commercial Property Services, Inc., covering the employees engaged in the Cleveland area in janitorial and custodial work since the founding of the company in 1974. The most recent of these agreements, effective May 1, 1981, to April 30, 1984, contains three provisions that are pertinent to this proceeding. Article XI is a job security provision and requires a signatory employer who takes over an account previously serviced by another signatory employer to retain the prior employer's employees at the same wages, terms, and hours of work.[1] Article XXI defines in broad terms the scope of the agreement. It provides, in part, that the contract covers as an employer subject to its full terms,

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[1]The relevant provisions of Article XI state:

JOB PROTECTION

Section 1. When an Employer takes over an account at which employees represented by the Union were previously employed, regardless of who was the Employer, the Employer shall not reduce the rate of pay, the other terms of compensation, or the number of employees and their hours of work...without the express written consent of the Union, unless one of the exceptions set forth in Section 2 of this Article may be applied.

. . .

Section 8. If an Employer takes over an account with which Local 47 has an Agreement other than this Agreement, the Employer will sign an Assumption Agreement prior to taking over the job. All conditions such as rates of pay, hours of work, seniority, vacations, holidays,...shall continue as they previously existed.

> any...corporation, firm, or any other entity which is engaged in janitorial work and is in any way a subsidiary or related entity to any Employer covered by this Agreement. Specifically and without limitation, this Agreement hereby includes any entity engaged in janitorial work which is operated in whole or in part by any officer, director or any person employed by any Employer covered by this Agreement, and further includes any entity engaged in janitorial work in which any investor in any Employer covered by this Agreement has any interest of any kind.

Finally, Article XIX requires the parties to settle any differences "as to the meaning of or application of provisions of this agreement" in a four-step process terminating in final and binding arbitration.

Local 47 also had a three-year contract with National Cleaning Contractors (National), executed in November, 1982. Local 47 members employed by National cleaned and maintained two downtown Cleveland office buildings (the Rockwell properties and the Illuminating Building), which were operated by First Union Management, Inc. First Union entered into subcontracts with independent companies for janitorial and custodial services.

When the cleaning contract between National and First Union expired in 1982, First Union solicited bids from other cleaning companies. National and CPS, signatories to a master agreement with Local 47, both submitted bids which were rejected, and First Union ultimately awarded the contract to CCM, a non-

union firm. National thereupon laid off the Local 47 members whom it previously had employed to clean the First Union buildings. CCM took over the janitorial and custodial services in both buildings in February 1983 with its own non-union employees.

In February 1983, Local 47 discovered that there was a close relationship between CCM and CPS. This discovery drew forth the remainder of the corporate cast in these proceedings. The principal actors are CPS and CCM, and playing a major role because of his relationship with each of them is Patrick Cassese. He and twelve other investors formed CPS, and Ohio corporation, in 1974 and Cassese operated the company and owned 49% of its shares. In 1978, CPS created a wholly-owned subsidiary, Total Systems Management, Inc. (TSM) to act as a consulting firm for small tenant buildings. TSM subcontracted all services to other companies, including both CPS and CCM, employed no one subject to Local 47's jurisdiction, and ceased business in 1982. In November 1982, Cassese formed Antares, Inc., a Pennsylvania corporation, for the express purpose of purchasing the shares of the other twelve investors in CPS. The district court found that Cassese owned all of the capital stock of Antares which in turn owned 100% of CPS.

Jack Cornachio, a nephew of Cassese, acquired the CCM business in 1976. Because of financial difficulties, Cornachio entered into an agreement in October 1982 with Cassese to sell him 70% of the shares but with an arrangement to retain 50% control. Cornachio continued as president and in con-

trol of CCM operations. Cassese's personal attorney, Robert Rosenfeld, served as one of CCM's two directors and as its secretary-treasurer. In fact, Cassese personally represented CCM in its successful negotiations with First Union, after CPS's bid had been rejected.

With the foregoing information in its possession, Local 47 launched its attack on CPS and CCM. First, it sent a letter to Cassese as president of CPS alleging that CPS violated the work preservation clause of the collective bargaining agreement with Local 47 by replacing Local 47 members with non-union employees at the two First Union buildings and at five other buildings, Lakeland Medical, Young Medical, Shaker Medical, Curtis Industries, and Diamond Shamrock. The letter informed CPS that unless it agreed to restore the former employees, Local 47 would seek injunctive relief to compel arbitration.

When CCM refused to retain the former National employees pending arbitration, Local 47 filed suit against CPS, CCM, First Union, Antares, and Total Systems Management (TSM)[2] Local 47 also filed a motion

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[2]At the same time, Local 47 filed an unfair labor practice charge with the National Labor Relations Board (NLRB) against CPS, CCM, and First Union. CPS responded by filing a petition for unit classification with the NLRB by which it sought to define the number of its employees subject to the terms of the master agreement. Local 47 also filed unfair labor practice charges with the Board charging CPS with interfering with its employees' bargaining rights and with assaulting its pickets at the Rockwell building.

for a temporary restraining order and First Union moved to dismiss. After a hearing on Local 47's motion, the court granted First Union's motion and denied Local 47's. Local 47 then moved for summary judgment. CCM moved for partial summary judgment and Antares and TSM filed motions to dismiss.

In September 1983, the court granted Local 47's motion for summary judgment, ordering CCM and CPS to arbitrate with Local 47 the questions of whether CCM was bound by the terms of the CPS-Local 47 agreement and whether the agreement had been breached. The court dismissed Antares and TSM from the lawsuit and denied CCM's motion for partial summary judgment.

CCM and CPS appealed from the rulings granting Local 47's motion for summary judgment, and CCM appeals from the denial of its motion for partial summary judgment. Local 47 cross-appeals from the dismissal of First Union, TSM, and Antares and from the denial of injunctive relief.

II.

CPS and CCM argue that the court erred in granting Local 47's motion for summary judgment and ordering them to arbitrate. They contend that before ordering arbitration, the court should have determined whether CCM was bound by the terms of the Local 47-CPS collective bargaining agreement.

In Howard Johnson Co. v. Detroit Local Joint Executive Board, 417 U.S. 249 (1974), the Supreme Court addressed a question with respect to a contract which purported to bind the successors and assigns of the employer. In that case, the former employer, the Grissoms, signed collective bargaining agreements which contained arbitration clauses and provided that the contract would

be binding upon the employer's "successors, assigns, purchasers, lessees, or transferees". Howard Johnson, 417 U.S. at 251.

The Grissoms sold their business to Howard Johnson, with an agreement expressly providing that Howard Johnson with certain exceptions would not assume the Grissoms' obligations, "including those under a labor agreement covering employees at two establishments". Howard Johnson then terminated the Grissom employees and hired its own employees, few of whom previously had worked for the Grissoms.

The Grissoms admitted that the collective bargaining agreement required that they as signatories arbitrate. Howard Johnson, however, refused to do so. The Supreme Court held that Howard Johnson could not be bound to the collective bargaining agreement between the Grissoms and the Union, absent a judicial determination of substantial continuity or identity of the work force or assumption of the agreement to arbitrate by Howard Johnson.

> The mere existence of the successorship clauses in the bargaining agreements between the unions and the Grissoms, however, cannot bind Howard Johnson either to the substantive terms of the agreements or to the arbitration clauses thereof, absent the continuity required by Wiley, when it is perfectly clear the Company refused to assume any obligations under the agreements.

Id. at 258, n3.

The Court distinguished its previous decision in John Wiley and Sons v. Livingston, 376 U.S. 543 (1964), in which a successor corporation was ordered to arbitrate pursuant to a collective bargaining agreement

signed by its predecessor, with whom it had merged. The Court noted that the successor was properly ordered to arbitrate in Wiley where the predecessor employer entity had "completely disappeared" as the result of a merger. Unless the union were afforded some remedy against the successor, it would have no means of enforcing those obligations voluntarily undertaken by the merged corporation which were intended to survive a change in ownership. Howard Johnson, 417 U.S. at 257. The hiring in Wiley by the surviving corporation of all of the employees of the predecessor corporation also weighed heavily in the Howard Johnson decision. The grievance which the union sought to compel Wiley to arbitrate were the claims of Wiley's own employees. In Howard Johnson, by contract, the union sought arbitration on behalf of the former Grissom employees who were not hired by Howard Johnson. Id. at 258-260.

What Local 47 seeks to do here is very similar to what the union sought in Howard Johnson, and the result must be the same. In this case, the signatory employer, CPS, continues as a viable entity with which the Union may bargain and arbitrate.[3] Therefore,

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[3]The district court found that approximately 2000 people are now engaged in janitorial and security guard work for CPS in Cleveland and Columbus, and in various cities in Pennsylvania, Colorado, and Texas. Service, Hospital, Nursing Home and Public Employees Union, Local No. 47 v. Commercial Property Services, Inc., No. C83-588 (N.D. Ohio Feb. 25, 1983) (order denying motion for temporary restraining order and dismissing First Union).

if CCM is not ordered to arbitrate, the Union is not left without a remedy.

Furthermore, the employees Local 47 seeks to protect are not and were not CCM's employees, but rather National employees. National laid them off when First Union awarded the contract to CCM. In this case, as in Howard Johnson, there is no continuity or identity of CCM's work force with National's work force. Therefore, the court may not order CCM to arbitrate, absent a finding that CCM and CPS are alter egos, or that the two constitute a single employer, or without otherwise determining that the situation is appropriate for piercing the corporate veil. See American Bell, Inc. v. Federation of Telephone Workers, 736 F. 2d 879, 886-889 (3rd Cir. 1984).[4]

The leading Sixth Circuit case in this area is not to the contrary. In Local 6, Bricklayers International Union v. Boyd G. Heminger, Inc., 483 F. 2d 129 (6th Cir. 1973), three unions charged that Heminger violated the union security and arbitration clauses of their collective bargaining agreement by hiring non-union employees through its "sham" corporation, Frank Fulton, Inc. The district court refused to refer the matter to arbitration because "the evidence and testimony indicate[d] a lack of sufficient common factors to illustrate a single employer or alter ego theory". Id. at 131.

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[4]The Howard Johnson court emphasized that "this is not a case where the successor corporation is the 'alter ego' of the predecessor..." 417 U.S. at 259, n.5.

The unions sought a remand with regard to Heminger only. This court reversed, holding that "[I]n signing these arbitration agreements the parties agreed to 'submit all grievances to arbitration, not merely those a court may deem to be meritorious'". Id. at 131, quoting United Steelworkers v. American Manufacturing, Inc., 363 U.S. 564, 567 (1960). The court therefore ordered Heminger to arbitrate the dispute according to the arbitration agreement which it had signed; it held Heminger to its promise to arbitrate grievances. The court, however, did not order Fulton, the non-signatory subsidiary, to arbitrate the dispute.

Consistent with Heminger, the district court in the case at bar did not err in ordering CPS to arbitrate, for CPS, like Heminger, was a signatory to the collective bargaining agreement, CPS must keep its promise to the Union to arbitrate grievances under the contract. However, we hold that a district court may not order a non-signatory to arbitrate a labor dispute, absent a specific finding that the relationship between it and the party bound to the agreement is such that it too is bound to arbitrate. See also General Drivers, Local Union No. 89 v. Public Service Co. of Indiana, 705 F. 2d 238, 241 (7th Cir. 1983). We therefore vacate the order of the district court and remand the case to it for a determination of whether the facts warrant a finding that CCM and CPS are alter egos, or constitute a single employer or whether the corporate veil should otherwise be pierced. See

American Bell, 736 F. 2d at 886-89.[5]

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[5]CPS and CCM also contend that they may not be compelled to arbitrate without a determination by the National Labor Relations Board of the appropriate bargaining unit. The threshold question of whether CCM is bound by the CPS-Local 47 collective bargaining agreement does not require the determination of an appropriate bargaining unit. The matter would only warrant a submission to the Board if the district court found that CCM was bound by the collective bargaining agreement had been breached.

Counsel for CPS has brought to our attention the recent decision of this court in Aquabrom, Division of Great Lakes Chemical Corp. v. NLRB, 746 F. 2d 335 (6th Cir. 1984). That case, however, arose in a different procedural context from the case at bar, and is therefore distinguishable. Aquabrom involved a Board order upholding a representation election and ordering Drug Research, Inc. its successors and assigns to bargain with the union. Aquabrom refused to do so on the grounds that it was not a successor to Drug Research, and the Board sued for contempt. This court held that, in that context, it was up to the Board, rather than the Special Master appointed by the district court, to determine whether Aquabrom would be bound by the Board's order. Aquabrom involved the question of whether a successor would be held liable for the unfair labor practices of its predecessor, and the concerns for procedural safeguards and deferral to agency expertise were more pressing than in the essentially contractual dispute at bar.

III.

In the prayer of their amended complaint, Local 47 sought inter alia, to enjoin all the defendants from: "discharging the employees currently performing janitorial word" at the Rockwell and the Illuminating Buildings; "changing any of the wages, hours, or the terms and conditions of employment of said employees", and directing the reinstatement of the employees discharged.

The district court denied injunctive relief on the ground that Local 47 failed to establish irreparable harm as a result of CCM's actions. On appeal, Local 47 argues "that all [it] seeks is the reinstatement of employees it has represented for many years to the locations where CCM has taken that work away". Brief for Local 47 In Answer to Brief of CPS at 16.

In Aluminum Workers International Union, Local 215 v. Consolidated Aluminum Corp., 696 F. 2d 437, 441-444 (6th Cir. 1982), this court considered the narrow exception to the anti-injunction policy of our national labor laws announced in Boys Markets v. Retail Clerks Union, 398 U.S. 235, 254 (1970).[6]

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[6] In Boys Markets, the Court carved out an exception to the narrow strictures of section 4 of the Norris-LaGuardia Anti-Injunction Act, 29 U.S.C. §104 (1982), by holding that when the underlying dispute is one over which the parties have agreed to arbitrate and ordinary equitable norms for relief have been met, a court may enjoin a strike in violation of a no-strike clause.

It noted that the courts have extended this exception "to embrace employer behavior which has the effect of evading a duty to arbitrate or which would otherwise undermine the integrity of the arbitral process". Aluminum Workers, 696 F. 2d at 441.

To obtain an injunction under Aluminum Workers, the Union must establish that the "underlying grievance is one which the parties are contractually bound to arbitrate" and must "satisfy the court that injunctive relief is warranted under 'ordinary principles of equity'". Id. at 442, quoting Boys Markets v. Retail Clerks Union, 398 U.S. at 254.

In the instant case, the Union did not establish that the underlying grievance is one which CCM was bound to arbitrate. The district court could not have enjoined CCM, the non-signatory, without first determining that CCM was bound by the arbitration agreement. We therefore hold that absent a judicial determination that two corporations are alter egos or a singular employer, a court may not enjoin a non-signatory to an arbitration agreement from hiring non-union employees. Furthermore, on this record it appears that the Union employees at the Rockwell and Illuminating Buildings were never hired nor discharged by CPS, CCM or the other defendants. Thus, the district court did not err in denying Local 47's motion for injunctive relief directing their reinstatement.

IV.

Local 47 also contends that the district court erred in granting First Union's motion to dismiss. The court dismissed

First Union on the ground that the court lacked subject matter juriscition under section 301 of the Labor Management Relations Act, 29 U.S.C. §185 (1982). This court has stated in Metropolitan Detroit Bricklayers District Council v. J. E. Hoetger & Co., 672 F. 2d 580, 583 (6th Cir. 1982): "We recognize that courts have generally held that this section [section 301] creates federal jurisdiction only over parties to the contract being sued upon." Local 47 argues that the court had jurisdiction over First Union, even though First Union was non-signatory to the Local 47-CPS collective bargaining agreement. The Union bases its argument on Smith v. Evening News Association, 371 U.S. 195 (1962), which held that a suit to vindicate an individual employee's rights arising under a collective bargaining agreement may be brought under section 301, even though the union, not the individual, is signatory to the agreement.

The holding in Evening News has been extended by this court to include suits brought by third-party beneficiaries of collective bargaining agreements, Hazen v. Western Union Telegraph Co., 518 F. 2d 766 (6th Cir. 1975) (suit brought by widow of union member), and to suits brought by non-signatory employees who claimed that their rights were protected by collective bargaining agreements, Hill v. Iron Workers Local 25, 520 F. 2d 40 (6th Cir. 1975) (suit brought by non-union member alleging he was protected by provisions of collective bargaining agreement). In the case at bar, neither the rights of First Union are in any way protected nor are its duties set forth in the provisions of the Local 47-CPS collective bargaining agreement.

The Union relies heavily on Wilkes-Barre Publishing Co. v. Newspaper Guild of Wilkes-Barre, Local 120, 647 F. 2d 372 (3d Cir. 1981), cert. denied, 454 U.S. 1143 (1982) and Painting and Decorating Contractors Ass'n of Sacramento v. Counties, Inc., 707 F. 2d 1067 (9th Cir. 1983), cert. denied, 104 S. Ct. 1709, (1984), in support of its broad contention that section 301 subject matter jurisdiction exists over all suits for violation of collective bargaining agreements.[7] The majority of courts, however. continue to apply a much narrower

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[7]Even in Wilkes-Barre Publishing and Painting and Decorating Contractors, there were close relationships between the parties and the signatories of the collective bargaining agreements. In Wilkes-Barre, the non-signatory party was a co-venturer in an enterprise which allegedly breached the collective bargaining agreement, and in Painting and Decorating Contractors, the non-signatory party was a non-profit corporation which consisted of representatives from the signatory employer associations and union. In the instant case, the connection between First Union and the collective bargaining agreement is tenuous: First Union has an agreement with an independent contractor, CCM, and CCM is allegedly an alter ego of CPS, a signatory to the agreement.

interpretation of the scope of section 301 jurisdiction. See Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc., 690 F. 2d 489, 502 (5th Cir. 1982), cert. denied, 104 S. Ct. 335 (1984); Loss v. Blankenship, 673 F. 2d 942, 946 (7th Cir. 1982); Bowers v. Ulpiano Casal, Inc., 393 F. 2d 421, 423 (1st Cir. 1968); Fox v. Mitchell Transport, Inc., 506 F. Supp. 1346, 1349 (D.Md.), aff'd mem., 671 F. 2d 498 (4th Cir. 1981).

We therefore hold that a district court does not have subject matter jurisdiction over a non-signatory to a collective bargaining agreement, where no rights or duties of the non-signatory party are stated in the terms and conditions of the contract.[8]

First Union originally moved to dismiss solely on the grounds that the court lacked subject matter jurisdiction over it under section 301. Local 47 then amended its complaint to include a pendent state law claim for tortious interference with contractual rights. Dismissal of this pendent claim was required once the federal claim was dismissed. See United Mine Workers of America v. Gibbs, 383 U.S. 715, 726 (1966); Kurz v. Michigan, 548 F. 2d 172, 175 (6th Cir.), cert. denied, 434 U.S. 972 (1977); Gibson v. First Federal Savings and Loan Ass'n of Detroit, 504 F. 2d 826, 830-31 (6th

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[8]Local 47 also argues that the court erred in granting First Union's motion to dismiss solely on the basis of evidence presented at the hearing on Local 47's motion for a temporary restraining order. Because we conclude that the court lacked subject matter jurisdiction over the claims against First Union, we do not reach this issue.

Cir. 1974).[9] Thus, the district court erred in dismissing Local 47's state law claim on the merits. It should have dismissed the claim without prejudice for want of jurisdiction.

V.

Local 47 also objects to the dismissal of TSM and Antares from the suit. It contends that the court should have ordered these corporations to arbitrate in order to "fully develop" the relationships among TSM, Antares, CCM, and CPS. As we held earlier in this opinion, a non-signatory to a collective bargaining agreement cannot be bound to its arbitration clause unless the court determines that the corporations may be pierced or that the corporations constitute a single employer. Moreover, in the instant case, Local 47 has never alleged that TSM or Antares violated the terms of the collective bargaining agreement. Furthermore, these corporations, as we have suggested, never hired nor discharged any of the employees whom Local 47 now seeks to reinstate. Therefore, the district court committed no error in dismissing the claims against TSM and Antares.

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[9]This circuit has moved away from the position that the court has discretion to retain jurisdiction over a pendent state claim where the federal claim has been dismissed before trial. Compare Kurz v. Michigan, 548 F. 2d at 175, and Gibson v. First Federal Savings and Loan Ass'n. of Detroit, 504 F. 2d at 830-31, with Gray v. International Ass'n of Heat & Frost Insulators, Local No. 51, 447 F. 2d 1118, 1120 (6th Cir. 1971).

VI.

Finally, CCM asserts that the court erred in denying its motion for partial summary judgment. According to CCM, the record demonstrates that there are no material facts in dispute with regard to the single employer-alter ego issue and that judgment should have been entered for CCM as a matter of law. CCM's argument is based on its contention that the district court should have made a determination on the single employer-alter ego issue. Had the court done so, according to CCM, it would have concluded that the facts as presented at the hearing and alleged by the parties could not support a finding that CPS and CCM were alter egos or constituted a single employer.[10]

Local 47 argued in response to CCM's motion for summary judgment that discovery has not been completed and that a determination by the court on the alter ego-single employer issue would be premature until further evidence has been presented. We agree. Local 47 has not yet had the opportunity to present the evidentiary support for its position that CPS and CCM constituted a single employer

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[10] On appeal, CCM has apparently dropped its argument that the court lacks subject matter jurisdiction under section 301 because CCM was a non-signatory to the collective bargaining agreement.

or are alter egos.[11] Under the circumstances, and because we remand the case to the district court for a full determination of this question, we conclude that the district court did not err in denying CCM's motion for partial summary judgment on this issue.

VII.

To recapitulate, we hold that the district court erred in ordering CCM to arbitrate under a collective bargaining agreement to which it was a non-signatory, and we remand for a determination of whether CCM and CPS constitute a single employer or alter egos, or whether the relationship between them is such that piercing the corporate veil separating them would be appropriate. We also conclude that the district court had no jurisdiction to entertain the merits of the state law claim against First Union. In all other respects, the judgment of the district court is affirmed.

In the appeal of CCM, No. 83-3761, each side will bear its own costs. In the appeal of CPS, No. 83-3762, costs are taxed against the appellants. In the cross-appeal of Local 47, No. 83-3788, costs are taxed against the cross-appellant.

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[11] Local 47's motion for summary judgment and its response to CCM's motion focused almost exclusively on the argument that the alter ego-single employer issue should be determined by the arbitrator rather than by the court.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SERVICE, HOSPITAL, NURSING HOME AND PUBLIC EMPLOYEES UNION, LOCAL NO. 47, AFFILIATED WITH THE SERVICE [EMPLOYEES] INTERNATIONAL UNION, AFL-CIO, CLC Plaintiff -v- COMMERCIAL PROPERTY SERVICES, INC., et al. Defendant.	CASE NO. C83-588 JUDGE SAM H. BELL MEMORANDUM AND ORDER

Service, Hospital, Nursing Home and Public Employees Union, Local No. 47, affiliated with the Service Employees International Union, AFL-CIO, CLC (hereinafter Local 47) filed this action pursuant to §301 of the Labor Management Relations Act (hereinafter LMRA), 29 U.S.C. §185, seeking a temporary restraining order, preliminary and permanent injunctive relief. Five companies are named as defendants: Commercial Property Services, Incorporated (hereinafter CPS);

Cleveland Cleaning and Maintenance Company (hereinafter CCM); Total Systems Management, Incorporated (hereinafter TSM); Antares, Incorporated (hereinafter Antares); and First Union Management, Incorporated.

After a hearing and order dated February 25, 1983, this court denied plaintiff's motion for temporary restraining order having found that the criteria for such relief had not been established. In addition, the order granted a motion to dismiss First Union Management, Incorporated.

Presently pending before the court is plaintiff Local 47's motion for summary judgment, defendant CCM's motion for partial summary judgment, defendant's Antares and TSM motions to dismiss the complaint as it relates to them, plaintiff Local 47's motion to dissolve protective order and First Union's motion for modification of blanket protective order. Motions in opposition have been filed to all of the above.

I. Local 47's Motion for Summary Judgment and CCM's Motion for Partial Summary Judgment

A. Local 47's Motion for Summary Judgment

Local 47's major premise is that all the defendants are bound to the terms of Article XI[1] of the collective bargaining agreement which covers job protection of its employees. Two incidents of alleged violation of Article XI are cited: the contracts entered between CCM and First Union Management, Incorporated, for the provision of janitorial services at the Rockwell Building and the Illuminating

[1]This article provides that when one employer of Local 47's members loses a contract to another employer of Local 47's members, the members' jobs are to be preserved under the new contract; in other words, the previous employees would be retained by the new employer at the building covered by the contract.

Building in downtown Cleveland. Both of these contracts have been filled with non-union workers which has served to displace Local 47's members employed at these locations under the previous contracts. Local 47 requested that CPS and CCM arbitrate two grievances: one relating to known sites where CCM had assumed contracts which displaced Local 47 members and the other relating specifically to the Rockwell Properties and the Illuminating Building. Both defendants have refused to submit these matters to arbitration.

Plaintiffs assert the position that on these and the following undisputed facts they are entitled to summary judgment. The relief sought is this court's order compelling all defendants to arbitrate the two grievances concerning the displacement of Local 47 members by non-union janitorial workers hired by CCM. Injunctive relief including reinstatement of Local 47 and

continuation of the terms of the collective bargaining agreement during the pendency of arbitration is also sought.

Pursuant to Federal Rule of Civil Procedure 56(c), the party moving for summary judgment has the burden of showing that no genuine issue of material fact exists and that as a matter of law, they are entitled to judgment. In reviewing a motion for summary judgment, a court must consider the pleadings, related documents and evidence, and all reasonable inferences in a manner most favorable to the non-moving party. Adickes v. Kress & Co., 398 U.S. 144 (1970); Smith v. Hudson, 600 F. 2d 60 (6th Cir. 1979), cert. dismissed, 444 U.S. 986 (1979); Board of Cincinnati v. Department of H.E.W., 532 F. 2d 1070 (6th Cir. 1976).

After a lengthy hearing related to a motion for temporary restraining order and review of a myriad of exhibits, this court set out the facts before it in its order

dated February 25, 1983. The summary of facts at pages 1-6 of that order has not been expanded or altered for the purpose of summary judgment review and shall be incorporated by reference in this order.

Because Local 47 first addresses its allegations toward CPS and CCM and also because there is a motion to dismiss Antares, Incorporated and Total Systems Management before this court, discussion of plaintiff's claim against the four defendants will be divided accordingly.

The master collective bargaining agreement at issue in this matter contains a clause entitled Grievance and Arbitration. See Plaintiff's Exhibit A, Article XIX. A grievance procedure is established which uses arbitration as the final resolution disputes and makes the arbitrator's decision "final and binding upon the Employer and the Union". Id. at Article XIX, section 4.

CPS is a signatory on the master collective bargaining agreement with Local 47. CCM, on the other hand, has employed non-union janitorial workers since its inception and has never been a party to or signatory on any collective bargaining agreement with Local 47.

The first question which must be addressed is whether this court may assume §301 jurisdiction as it relates to CCM inasmuch as there is an absence of contractual relationship between it and Local 47. Section 301(a) provides that federal courts have jurisdiction to examine alleged violations of collective bargaining agreements:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought it any district court of the United States having jurisdiction of the parties, without

> respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. §185(a). Three requirements must be met to assert a §301 claim: (1) an assertion of a violation of (2) a contract (3) between an employee and a labor organization. Carpenters Local Union No. 1846 v. Pratt-Farnsworth, 690 F. 2d 489, 500 (5th Cir. 1982), citing, Alvares v. Erickson, 514 F. 2d 156, 161 (5th Cir.) cert. denied, 423 U.S. 874 (1975). These requirements are definitely met as to CPS. As CCM is a non-signatory to the contract, however, jurisdiction may only be assumed if Local 47 can establish an alternate ground for holding CCM to agreement.[2] Carpenters Local Union

[2]Jurisdiction of a §301 claim against one who was not a party to a collective bargaining agreement was recently approved by the Sixth Circuit in Metropolitan Detroit Bricklayers District Council, Int'l Union v. J. E. Hoetger & Co., 672 F. 2d 580 (6th Cir. 1982), in the context of a joint employer issue.

No. 1846 v. Pratt-Farnsworth, supra at 503. Local 47 contends that CCM is in fact bound to the master contract on either of two theories: First, by virtue of Article XXI[3] of the contract

[3]This agreement shall be binding upon and for the benefit of the signatories hereto and their respective successors and assigns.

This agreement hereby covers as an Employer subject to the full terms of this agreement any individual proprietorship, partnership, corporation, firm, or any other entity which is engaged in janitorial work and is in any way a subsidiary or related entity to any Employer covered by this agreement. Specifically and without limitation, this agreement hereby includes any entity engaged in janitorial work which is operated in whole or part by any officer, director or any person employed by any employer covered by this agreement, and further includes any entity engaged in janitorial work in which any investor in any employer covered by this agreement has any interest of any kind.

Any employer covered by this agreement, including without being limited to employers covered solely by operation of this article, may not subcontract to any other person or entity any of the work which is or may be performed by employees covered by this agreement, except for the cleaning of venetian blinds, cleaning required by an emergency occasioned by fire or flood, or a one time only special job.

and second, because CCM is allegedly an alter ego of CPS. Either of these theories properly allege §301 jurisdiction as to CCM as long as the underlying grievances are arbitrable. See Buffalo Forge Co. v. United Steelworkers of America, 428 U.S. 397 (1976) and the Steelworkers Trilogy: United Steelworkers v. American Mfg. Co., 363 U.S. 564 (1960); United Steelworkers v. Warrior & Gulf Navigation Co., 363 U.S. 574 (1960); United Steelworkers v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960). In this case the underlying grievances involve the displacement of workers covered by Local 47's master agreement. This is a matter that would violate a specific provision of the contract by a party and would be subject to arbitration under that agreement. See Plaintiff's Exhibit A, Article XI, Job Protection. Accordingly, the court finds that it may assume §301 jurisdiction over Local 47's claim as it relates to both CPS and CCM.

The Sixth Circuit Court of Appeals has defined the inquiry to be undertaken by a district court when a union files a suit to compel arbitration under these circumstances. Local No. 6, Bricklayers, Masons and Plasterers International Union of America v. Boyd G. Heminger, Inc., 483 F. 2d 129 (6th Cir. 1973). The court held that the union's burden "was not to present a prima facie case on the creation of a sham or alter ego corporation by the employer. The burden was to show that, assuming there was a sham or alter ego corporation..., there would then be a violation of the collective bargaining agreement". Id. at 131. In compliance with federal policy favoring arbitration when it is made a part of a collective bargaining agreement, the court found that because the underlying dispute was arbitrable, the alter ego issue should also be resolved by arbitration. The case was remanded to the

district court to order arbitration between the signatory company and the union. The union had not sought a remand for direction of arbitration as it relates to the alleged alter ego company.

With the guidance of the Sixth Circuit and the national policy favoring arbitration, South Prairie Construction Co. v. Local 627, IUOE, AFL-CIO, 425 U.S. 800 (1976); Carey v. Westinghouse Electric Corp., 375 U.S. 261 (1974), it seems apparent to this court that not only the underlying grievances but also the issues as to whether CCM is bound to the master agreement by virtue of the contract or by virtue of being an alter ego should be ordered to arbitration.

CPS and CCM argue in their briefs in opposition to Local 47's motion for summary judgment that the matters involved in this case are "representational" rather than "contractual". The significance of this

argument is that representational issues are clearly within the exclusive domain of the National Labor Relations Board (hereinafter NLRB) and not subject to arbitration. It would appear that if CCM is found to be liable under the contract for the purpose of the grievances before the arbitrator, however, no new representation would have to be ascertained since all of the affected employees had been Local 47 members before displacement. In addition, if the arbitrator's decision does not completely dispose of this dispute, and if actual representational issues need to be resolved, the NLRB could then take jurisdiction of those issues.

Accordingly, it is the order of this court that Local 47's summary judgment motion as to CPS and CCM is granted. CPS and CCM are ordered to submit to arbitration the two grievances filed by Local 47 which are the subject of this controversy.

The additional relief sought by Local 47 in the form of injunctive relief for reinstatement of Local 47 employees is, however, denied. The court fully explored the evidence in relation to the requirements for granting injunctive relief in its February 25, 1983 order denying plaintiff's motion for temporary restraining order. No new evidence has been presented, and the court finds no reason to justify such relief.

B. CCM's Motion for Partial Summary Judgment.

The major premise advanced by CCM in support of its motion is that it is entitled to judgment as a matter of law because it is a nonsignatory on any collective bargaining agreement with Local 47 and not an alter ego of CPS. CCM argues that if this court does not so find, then its motion to stay should be granted pending resolution of the alleged unit ussue by the NLRB.

In view of the findings of the court in relation to Local 47's motion for summary judgment, CCM's position is untenable. It has been decided that §301 jurisdiction is possible over a nonsignatory party and that the alter ego issue should be referred to arbitration with the underlying grievances. CCM argues that the Sixth Circuit has addressed the issues before this court in Service, Hospital, Nursing Home and Public Employees Union, Local 47 v. Cleveland Tower Hotel, Inc., 606 F. 2d 684 (6th Cir. 1979) and decided that Local 47 could not impose its bargaining agreement upon non-signatories in this situation. That suit was a §301 claim seeking enforcement of four collective bargaining agreements as they allegedly related to a successor employer. Arbitration was not sought or considered. The factual inquiry as to whether the new employer was successor to the old, and thereby a signatory on the bargaining

agreement, was squarely before the court and decided against Local 47. The complaint before this court seeks an order to arbitrate and injunctive relief and has been found subject to arbitration pursuant to Sixth Circuit direction in more similar circumstances. See Local 6, Bricklayers, Masons and Plasterers Int'l Union of America v. Boyd G. Heminger, Inc., supra. This court is not addressing the merits of whether the bargaining contract may be extended to reach CCM but only whether it should be submitted to arbitration. Accordingly, the Cleveland Tower Hotel, Inc. case is inapposite.

For these reasons, it is ordered that CCM's motion for partial summary judgment is denied.

II. Antares and TSM Motions to Dismiss

TSM, a wholly owned subsidiary of CPS, was formed in 1978 to serve as a managing

consulting company for small tenant buildings which generally cannot afford the service of a full cleaning service. TSM would secure written bids from various contractors to service the small tenant accounts on a subcontractors basis. Janitorial workers were never employed by TSM but rather provided by the sub-contractor. CPS, among others, held sub-contracts with TSM. A management account was sold to CCM in February, 1982 which expired in June, 1982. Otherwise, TSM has not conducted any business since June, 1981.

Antares, a Pennsylvania Corporation, was formed by Mr. Patrick J. Cassese in November, 1982 for the purpose of purchasing CPS stock owned by its twelve investors (hereinafter B Shareholders). (Mr. Cassese held the thirteenth interest in CPS.) The agreement between Antares and the B Shareholders was for the purchase and retirement of their shares by Antares and

and issuance of notes to the B Shareholders secured by the shares pledged to three of the B Shareholders under a pledge agreement. In this manner, Mr. Cassese became owner of one hundred percent of Antares which in turn owns one hundred percent of CPS.

TSM and Antares assert that they should be dismissed because neither has or has had any janitorial employees nor has Local 47 demónstrated any dispute as it relates to them. Local 47 contends first that §301 jurisdiction should extend to these non-signatories as well and that as entities covered by Article XXI, supra at n. 3, they should be required to appear before the arbitrator for a full resolution of the alter ego issue.

Although Local 47 argues that the evidence does not substantiate that these entities have no employees, it appears clear to the court that there is no evidence produced by Local 47 that either entity employs

or could employ janitorial workers. There is certainly no allegation that either entity has contracted to provide janitorial services which has resulted in the displacement of its members. This court has determined that §301 jurisdiction is possible as to nonsignatories to a bargaining agreement but only upon the showing of some alternate ground. As plaintiff's claim relates to Antares and TSM, however, even if they could be found to be alter egos, they have not been alleged to have caused injury to Local 47.

Accordingly, Antares and TSM are dismissed as parties and are not included in the court's arbitration order.

III. First Union Management, Incorporated, Motion for Modification of Blanket Protective Order and Local 47's Motion to Dissolve Protective Order.

The numerous exhibits submitted during the course of the temporary restraining order

hearing have been subject to a blanket protective order entered without objection by any party. Review and copying by each party was allowed for the purpose of preparing post-hearing briefs. While Local 47 now requests that the protective order be dissolved, First Union and CCM urge that it be continued due to the prejudicial effect disclosure would have upon them in the marketplace and in a labor relations sense. The court finds that these concerns are well taken, especially as they relate to First Union who has been dismissed from this suit. As this case is terminated before this court with the issuance of this order, the following order shall apply to the exhibits held by the court:

(1) The exhibits shall be used for no purpose other than preparation for arbitration or of an appeal of rulings of this court.

(2) All protected materials in possession of any party shall be returned under seal to its owner within ten days of this order.

(3) For the purpose of arbitration or appeal preparation, counsel for all concerned parties shall meet within the thirty-day period to agree upon the exhibits they each require for use on appeal. A statement shall be drawn and submitted to the court indicating each parties requests by exhibit number. Copies may be made the courthouse at the attorneys' expense or the court will approve another method of duplication provided all parties have agreed.

(4) After thirty days have passed from the date of this order, the court will distribute the exhibits to their owners through the respective attorneys who make a request within ten days.

IT IS SO ORDERED.

/s/ Sam H. Bell
SAM H. BELL
U. S. District Judge

EXHIBIT "A"

AGREEMENT

between

SERVICE, HOSPITAL, NURSING HOME
AND PUBLIC EMPLOYEES UNION,
LOCAL 47
AFL-CIO

and

CLEANING CONTRACTORS

TERM OF AGREEMENT:
May 1, 1981 to April 30, 1984

Exhibit "A"

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A G R E E M E N T

THIS AGREEMENT made and entered into between SERVICE, HOSPITAL, NURSING HOME AND PUBLIC EMPLOYEES UNION, LOCAL NO. 47, AFL-CIO, hereinafter referred to as the "UNION", affiliated with Service Employees International Union, AFL-CIO, and COMMERCIAL PROPERTY SERVICES, INC., hereinafter referred to as the "EMPLOYER",

W I T N E S S E T H:

WHEREAS, it is the desire of the said Union and the Employer to enter into an Agreement to establish a peachful settlement and adjustment of all grievances which will tend to stabilize and strengthen the business of the Employer and to establish wage rates and working conditions, including work load, which will prevail between the parties hereto during the existence of this Agreement,

NOW, THEREFORE, it is hereby mutually agreed:

ARTICLE I
Recognition, Union Shop, Checkoff and Non-Interference

Section 1. Recognition. The Employer recognizes the Union as the exclusive collective bargaining agent for all its employees engaged in janitorial work, excluding office employees and supervisors as defined in the Labor-Management Relations Act of 1947, as amended; i.e., supervisors who only perform bargaining unit work as permitted by Article XXVII and also excluding only any such account where only one (1) employee is engaged, if such an account is not owned or operated by an entity which operates in more than one location serviced by the Employer. Accounts being serviced

as of June 15, 1981 under the fifteen (15) hour or less exclusion in the 1978-1981 Agreement between the parties shall, so long as the same Employer continues to service the account, remain excluded if the Employer provides to the Union by June 30, 1981 a written list of the name, locations at which the work is performed, and initial servicing date of all such accounts.

ARTICLE IX
Pension Plan

Section 1. Signatory to Plan.

The Employer, by becoming signatory to this Agreement, agrees to be bound by the trust document establishing the Building Service Local 47 - - Cleaning Contractors Pension Plan, and the Employer further hereby agrees to abide by all rules and regulations promulgated by the Trustees of said Plan, not inconsistent with this Agreement.

Section 2. Contributions.

The Employer shall contribute to the Building Service Local 47 - - Cleaning Contractors Pension Plan the following amounts:

Effective Date	Amount
May 1, 1981	Sixteen cents (.16)
May 1, 1982	Eighteen and one-half cents (.185)
May 1, 1983	Twenty-one cents (.21)

for each hour compensated by the Employer for the term of this Agreement for each employee in the bargaining unit from the date of hire, provided that the Employer shall not have to contribute for employees hired to replace employees on vacation for whom contributions are being made. Such contributions shall be due on a monthly basis. Each monthly period shall be a calendar month and shall include all hours compensated in all payroll periods which were paid during that calendar month. The amount

due for any given month shall be paid in full to the Pension Plan not later than the twentieth (20th) day of the second month after the month due, i.e., contributions due for hours compensated in January are to be paid not later than March 20. The Employer shall also contribute to the Pension Plan any amounts it owes as withdrawal liability as provided by law. Contributions shall be paid by the Employer to the agent designated by the Trustees of the Pension Plan, and shall be accompanied by a list of the full names of all employees for whose compensated hours contributions are being made, the social security numbers of each such employee, and the number of hours compensated for each employee on which contributions are then being made.

ARTICLE XI
Job Protection

Section 1. When an Employer takes over an account at which employees represented by the Union were previously employed, regardless of who was the Employer, the Employer shall not reduce the rate of pay, the other terms of compensation, or the number of employees and their hours of work, or change the starting and quitting times of any employee on that account without the express written consent of the Union, unless one of the exceptions set forth in Section 2 of this Article may be applied.

Section 2. The Employer shall not reduce the rate of pay, other terms of compensation, the number of employees or the total number of hours assigned, or change the starting and quitting times of any employee at any individual account or job site from what they were on the effective date of this Agreement, without the ex-

press written consent of the Union. However, the application of the provisions of Article X, Attrition, shall be an exception to this Section, and the reduction of a substantial amount of work on an account shall permit a layoff of employees in accord with the terms of this Agreement appropriate to the reduction of work for the Employer on that account. This exception for reduction of work on an account shall not be used as a basis for increasing the workload of any employee.

Section 3. Whenever an Employer loses an account or job site such Employer shall give written notice of such loss of the account or job site at least twenty (20) days prior to the effective date of the loss, if such notice is possible. The notice shall specify the person or business entity which will provide the cleaning services to that account, if known, upon the termination of the service by the Employer giving the notice, and shall list employees who were working at that account, including their addresses and telephone numbers, and the job classification, current rate of pay, and schedule of hours worked with starting and quitting times for each day for each employee. Failure to give such notice required above shall subject the Employer to liquidated damages of One Hundred Dollars ($100.00).

Section 4. If an individual account or job site has been taken over by an Employer, or an employee files a written complaint with the Union claiming a violation of this Article at an individual account or job site, the Union shall have the right to conduct an investigation, including the inspection and auditing of the books or records of the present or former Employer necessary to verify the hours of work of the employees relating to such an individual account or job site, in order to determine whether any provisions of this Article have been violated. All fringes shall be the continued obligation of the new Employer.

Section 5. When an Employer takes over an account upon which employees were previously represented by the Union, such Employer shall immediately notify the Union of such take-over and furnish the Union a written list of the employees who are to be retained at the account. Failure to give such notice required above shall subject the Employer to liquidated damages of One Hundred Dollars ($100.00). The Employer shall employ the same employees that worked on that account as specified in Section 1 of this Article, except for those employees who elect to continue working for the Employer which has lost the account. Those employees shall have as their seniority with the new Employer the same total seniority which they had with the previous Employer. Also, the seniority of the employees at the individual account shall be that which they had with the previous Employer at that account.

Section 6. No work which is now or may be performed by the members of the bargaining unit covered by this Agreement shall be performed by any person who is not a member of the bargaining unit; except in an emergency or for the purpose of instructing in proper methods.

Section 7. If an Employer which has signed this Agreement as its first Agreement with the Union has reduced the number of employees or the hours of work at an account or job site at which employees were represented by the Union prior to that Employer taking over the account or job site, the number of employees and/or the total number of hours worked at such accounts or job sites shall immediately be restored to the levels that existed when the Union last previously represented employees working at that account and/or job site.

Section 8. If an Employer takes over an account with which Local 47 has an Agreement other than this Agreement, the Employer will sign an Assumption Agreement prior to taking over the job. All conditions such as rates of pay, hours of work, seniority, vacations, holidays, insurance coverages, pension coverages and any items not specifically enumerated herein shall continue as they previously existed.

ARTICLE XII
Health and Welfare Fund

Section 1. Signatory to Plan.

The Employer, by becoming signatory to this Agreement, agrees to be bound by the trust document establishing the Local No. 47 Welfare Fund No. 1 and the Employer further hereby agrees to abide by all rules and regulations promulgated by the Trustees of said Fund, not inconsistent with this Agreement.

Section 2. Contributions.

Effective May 1, 1981 the Employer shall contribute forty cents (.40) per hour to the Local No. 47 Welfare Fund No. 1 for each hour compensated by the Employer for the term of this Agreement for each employee in the bargaining unit from the date of hire, provided that the Employer shall not have to contribute for employees hired to replace employees on vacation for whom contributions are being made. Such contributions shall be due on a monthly basis. Each monthly period shall be a calendar month and shall include all hours compensated in all payroll periods which were paid during that calendar month. The amount due for any given month shall be paid in full to the Welfare Fund not later than the twentieth (20th) day of the second month after the month due, i.e. contributions due

for hours compensated in January are to be paid not later than March 20. Contributions shall be paid by the Employer to the agent designated by the Trustees of the Welfare Fund, and shall be accompanied by a list of the full names of all employees for whose compensated hours contributions are being made, the social security numbers of each such employee, and the number of hours compensated for each employee on which contributions are then being made.

Section 9. Benefits.

During the term of this Agreement the benefits provided by the Fund shall be the benefits provided on April 30, 1981 plus the improvements in life insurance, accidental death and dismemberment insurance, accident and sickness weekly indemnity, and paid prescription benefits reflected in Schedule A. The eligibility requirements for benefits provided by the Fund shall remain the same as they were on April 30, 1981.

Section lo. Reserves of the Fund.

Whenever the reserves of the Health and Welfare Fund fall below the amount of three months' expenditures, the Trustees shall immediately meet and determine the amount of additional contribution necessary by the Employers to meet all the obligations of the Fund and to maintain the aforesaid reserve. Immediately upon such a determination each Employer contributing as a party to this Agreement shall be informed of the decision of the Trustees and shall begin making contributions as required by that decision.

The term "three months' expenditures" shall be deemed to equal one-fourth (1/4) of the Fund's expenditures in the twelve-month period ending with the date of the last financial statement. The Trustees shall work diligently to effect cost savings where reasonable and proper and to

increase administrative efficiency in the operation of the Health and Welfare Plan.

ARTICLE XIX
Grievance and Arbitration

Section 1. Grievance Procedure. Should differences arise between the Employer and the Union as to the meaning of or application of provisions of this Agreement, such differences shall be settled in the following manner and order:

(a) The matter shall be discussed between the employee, his Steward, if there is a Steward on the account, and the immediate supervisor within a reasonable time after the employee has knowledge of the event giving rise to the grievance.

(b) If a satisfactory settlement is not reached in Step (a), the matter shall be discussed within a reasonable time between the designated representatives of the Employer and the Union. The representative of the Employer shall state, in writing, the reasons for disagreement with the position taken by the representative of the Union. Reasons cited shall be made with specificity, shall cite this Agreement where appropriate and shall state all issues of fact and interpretation. The Employer may request a like statement from the Union.

(c) If a satisfactory settlement is not reached at Step (b) concerning an Employer or employee grievance, the matter may be taken before the Executive Board of the Union for approval to submit the matter to arbitration. If the matter is not taken before the Executive Board within sixty (60) days of the Union's receipt of the Employer's

written statement in Step (b), the matter shall be considered settled in accordance with the Employer's written statement.

Section 2. Powers of the Executive Board. The Executive Board, upon due consideration, may deny approval for the submission of any matter to arbitration. Further, the Executive Board may approve the submission of any matter to arbitration of its own motion without consent of the employee or employees involved.

Section 3. Arbitration. Once a matter has been approved for arbitration, the Union shall request a panel of seven (7) arbitrators from Federal Mediation and Conciliation Service. If none of the arbitrators on the panel is acceptable to the Union, the Union shall so notify the Employer and request Federal Mediation and Conciliation Service to forward a second panel.

If the Union finds one or more arbitrators on the list to be acceptable, it shall send by Certified Mail a priority listing, ranking all acceptable arbitrators in order of preference, said priority listing to be sent to the Employer or his representative designated, in writing, to receive such correspondence.

If no response is received from the Employer or his representative by Certified Mail within fourteen (14) days from the mailing of the Union's priority listing, the Employer shall be deemed to have agreed to the appointment of the first arbitrator on the Union's priority listing.

The Employer or his representative may within the fourteen (14) day period notify the Union, in writing, by Certified Mail of its preference for the appointment of an arbitrator or may request that a second panel be obtained from the Federal Mediation and Conciliation Service.

If both parties forward a list of preferred arbitrators, they shall discuss the appointment of an arbitrator by mutual designation. If no agreement is reached within fourteen (14) days of the Union's receipt of the Employer's priority listing, the Union shall automatically request a second panel from the Federal Mediation and Conciliation Service, unless the parties mutually agree to the contrary.

In any case where a second panel is requested, the parties shall be bound to select an arbitrator by the strike-off method, the Union and the Employer alternately striking a name from the panel, the last remaining arbitrator to be deemed the mutual selection of the parties.

Section 4. Power of Arbitrator. Decision of the Arbitrator shall be final and binding upon the Employer and the Union. The arbitration procedure shall not be used to change or modify this Agreement.

Section 5. No Strike - - No Lockout. Inasmuch as this Agreement provides for fair and equitable means of disposing of grievances, the employees and the Union, both individually and collectively, agree that, except as provided herein, there shall be no strike, slow-down, or interference with production during the life of this Agreement and the Employer agrees it will not lock out the employees during the life of this Agreement.

Section 6. The Employer, in any actual case or controversy, may institute a grievance at Step (b) by serving a written statement on the designee of the Union. Such statement shall be sent by Certified Mail and shall state all issues of fact and interpretation, citing the contract where appropriate and shall make a specific demand for relief.

In all such cases the status quo, as determined by the position of the Union, shall be maintained until the matter is settled.

Section 7. It is agreed by the Union and the Employer that the individual fees and expenses of the arbitrator will be paid equally by both the Union and the Employer.

ARTICLE XXI
Successors and Assigns
Other Employers

This Agreement shall be binding upon and for the benefit of the signatories hereto and their respective successors and assigns.

This Agreement hereby covers as an Employer subject to the full terms of this Agreement any individual proprietorship, partnership, corporation, firm or any other entity which is engaged in janitorial work and is in any way a subsidiary or related entity to any Employer covered by this Agreement. Specifically and without limitation, this Agreement hereby includes any entity engaged in janitorial work which is operated in whole or in part by any officer, director or any person employed by any Employer covered by this Agreement, and further includes any entity engaged in janitorial work in which any investor in any Employer covered by this Agreement has any interest of any kind.

Any Employer covered by this Agreement, including without being limited to Employers covered solely by operation of this Article may not subcontract to any other person or entity any of the work which is or may be performed by employees covered by this Agreement, except for the cleaning of venetian blinds, cleaning required by an emergency occasioned by fire or flood, or a one time only special job.

ARTICLE XXVIII
Remedies

The provisions of this Agreement, as they relate to Union Security and dues collection, bonding requirements, Pension, Health and Welfare and other economic items, may be enforced by a civil action filed in any Court of the United States or of any State which has competent jurisdiction, and the Employer and the Union agree that such Court shall have jurisdiction to grant specific performance and/or all forms of equitable and/or legal relief. The Employer agrees that it will not assert as a defense to any such action the failure of the Union to file and process a grievance under the procedures of this Agreement.

ARTICLE XXX
Duration

THIS AGREEMENT shall become effective as of May 1, 1981 and will continue in force and effect until midnight, April 30, 1984, and from year to year thereafter until either party desires to modify or terminate the Agreement, and notifies the other party, in writing, of its desire to terminate or modify at least sixty (60) days prior to May 1st of any subsequent year.

THIS AGREEMENT shall be subject to Amendment at any time by mutual consent of the parties hereto, and any such Amendment agreed upon shall be reduced to writing and signed by the parties hereto.

THIS AGREEMENT WAS EXECUTED BY DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES ON THE DATES BELOW THE SIGNATURES AFFIXED HERETO.

SERVICE, HOSPITAL, NURSING HOME AND
PUBLIC EMPLOYEES UNION, LOCAL 47,
SERVICE EMPLOYEES INTERNATIONAL UNION,
AFL-CIO

doing business as.....

.....

By:.....

By:.....

Dated:.....

By:.....

By:.....

By:.....

Dated:.....

SCHEDULE A
SCHEDULE OF BENEFITS

1. Life Insurance (as described in your certificate)..... $5,000.00
   Effective July 1, 1981..... $6,000.00
   Effective May 1, 1983..... $7,000.00
   Note: This life insurance benefit will be reduced to $2,000.00 ($3,000.00 effective July 1, 1981) and will continue in effect for eligible employee-members receiving benefits under the Building Service Local 47 - - Cleaning Contractors Pension Plan. Effective May 1, 1983 Penioners will be covered by $4,000.00 in life insurance benefits.

2. Accidental Death and Dismemberment Insurance..... $5,000.00
Effective July 1, 1981..... $6,000.00
Effective May 1, 1983..... $7,000.00

3. Accident and Sickness Weekly Indemnity Maximum
Effective July 1, 1981..... $ 45.00
Effective May 1, 1982..... $ 55.00
Effective May 1, 1983..... $ 65.00
Accident benefits begin with the first day of non-occupational disability. Sickness benefits begin with the eighth day of non-occupational disability. Each is payable for a maximum of twenty-six weeks during any period of disability. Your Weekly Indemnity will be equal to sixty-six and two-thirds percent (66-2/3%) of your average straight time earnings for the ninety (90) days before the beginning of the period of disability for which benefits are payable, however, it will not exceed the maximum benefit as shown above.

4. Medical Benefits
Your coverage for the following plan of medical insurance benefits will begin automatically when you become eligible. If you elect to obtain your medical coverage through the Kaiser Community Health Foundation or Group Health Plan of Northeast Ohio when the option is made available to you, you will be covered by the provisions of either plan. Those of you who do not elect to be covered by the Kaiser Group Health Plan will continue to be covered for the following plan of benefits:

Hospital Room and Board -- full cost of semi-private care.
Number of days per disability....70 days
Hospital Emergency Accident Out-Patient Care.....Full Cost
Surgical Expense Benefit (Scheduled Amounts).....$500.00

Paid Prescription Benefit--Full cost less $1.00 deductible charge per prescription. Family coverage of the paid prescription benefit for active employees shall be furnished by the Fund effective May 1, 1983, if in the opinion of an actuary employed by the Fund said benefit can be provided for twelve (12) months without increasing the contribution rate of the Employers during said twelve (12) months.

Vision Care Benefit--full cost less $5.00 Deductible charge for examination, frames and lenses, if provided by a participating panel doctor. If a non-panel doctor is selected, then a benefit schedule will apply.

Major Medical Insurance--Maximum Amount (for each cause) $15,000.00.

Deductible Amount--the amount of benefits provided under our basic plan described above and under any other group plan.

Private Room Limit...Up to the hospital's average charge for semi-private rooms.

Co-Insurance Factor...See limits respecting psychiatric treatment.

Except for the drug prescription benefit prescribed above, dependent benefits are not provided under this plan.

EXHIBIT "B"

February 7, 1983

Mr. Patrick J. Cassese
President
Commercial Property Services, Inc.
3416 Prospect Avenue
Cleveland, Ohio 44115

Dear Mr. Cassese:

Local 47 has just learned that for some time Commercial Property Services, Inc. (CPS) has transfered janitorial work from employees represented by Local 47 to operations under an alter ego of CPS, Cleveland Cleaning & Maintenance, where the employees have been treated as if they were not represented by Local 47 and not covered by collective bargaining agreements between CPS and Local 47. In some instances the transfer has been from situations where the work was actually performed by CPS, and in other instances the work was performed by other employers who were under contract with Local 47 as the representative of their janitorial employees.

Local 47 is currently aware of such transfer of operations at the following locations:

Curtis Industries, Inc.
Eastlake, Ohio
Lakeland Medical Building
Euclid, Ohio
Young Medical Building
Cleveland, Ohio
Shaker Medical Building
Cleveland, Ohio
Diamond Shamrock
Concord, Ohio

In addition Local 47 has learned a similar transfer of work is scheduled to take place on February 13, 1983 for the janitorial services performed at the Illuminating Building, 55 Public Square, Cleveland, Ohio, and two buildings located at Rockwell and East Sixth Street in Cleveland, Ohio. Both of those properties are managed by First Union Management, Inc.

In all these instances the conduct violates either Article XI and Article XXI of collective bargaining agreements between CPS and Local 47 which became effective on May 1, 1978 and May 1, 1981, or violates the provision for work preservation in the Agreement reached between Local 47 and Employers of the Downtown Building Group, including CPS, on November 15, 1982. This letter constitutes two grievances protesting these transfers of work as violations of said Agreements. The first grievance deals with all of the locations listed separately above. The second grievance deals with the work which Cleveland Cleaning & Maintenance is to take over on February 13, 1983 at the Illuminating Building and the East Sixth and Rockwell buildings. In both grievances the Union seeks restoration of employees displaced from work, full back pay and restoration of all benefits for those employees, payment of all contributions due to the Pension and Welfare Funds, and fulfillment of all other obligations which CPS had or has as an employer under the collective bargaining agreements.

Since the actions giving rise to the second grievance has not yet taken place but will take place shortly, it is necessary that CPS immediately enter into a written agreement with Local 47 that work performed at the East Sixth and Rockwell Building will

be performed in accord with all terms and conditions of the agreement between CPS and the Union effective May 1, 1983, including, without limitation, the retention of employees currently providing janitorial services at that location, and that the work to be performed at the Illuminating Building will be performed in accord with the Agreement reached with CPS and other Downtown Building Employers on November 15, 1982, including, without limitation, retention of the employees who are currently providing janitorial services at that location, until this grievance can be arbitrated. If CPS does not enter into such a written agreement by 10:00 A.M. on Wednesday, February 9, 1983 then be hereby advised that at that hour Local 47 will file an action in the United States District Court for the Northern District of Ohio, Public Square, Cleveland, Ohio, seeking injunctive relief, including the granting of a temporary restraining order immediately after the filing of the lawsuit, to require the enforcement of the Agreements between CPS and Local 47 as requested in this paragraph, pending arbitration of the second grievance, and if necessary to require such enforcement during action to enforce the award issued by the arbitrator.

Very truly yours,

Joseph E. Murphy

JEM:tmh
0309H

EXHIBIT "C"

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SERVICE, HOSPITAL, NURSING HOME AND PUBLIC EMPLOYEES UNION, LOCAL NO. 47, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC	CASE NO. C83-588
Plaintiff,	JUDGE BELL
-vs-	
COMMERCIAL PROPERTY SERVICES, INC. c/o Patrick J. Cassese, Statutory Agent 1200 Ohio Savings Plaza Cleveland, Ohio 44114	AMENDED COMPLAINT
CLEVELAND CLEANING AND MAINTENANCE COMPANY c/o CT CORPORATION SYSTEMS, Statutory Agent Union Commerce Building Cleveland, Ohio 44115	
TOTAL SYSTEMS MANAGEMENT, INC. c/o Sanford Gross, Statutory Agent 1326 Terminal Tower Cleveland, Ohio 44113	

ANTARES, INC.
c/o Patrick J. Cassese
President and Chairman
of the Board
3416 Prospect Avenue
Cleveland, Ohio 44115

and

FIRST UNION MANAGEMENT, INC.
c/o C.T. Corp. Systems,
Statutory Agent
Union Commerce Building
Cleveland, Ohio 44115

Defendants.

JURISDICTION AND VENUE

1. The jurisdiction of this Court is invoked pursuant to §301 of the Labor Management Relations Act (LMRA), 29 U.S.C. §185.

2. Venue of this controversy is conferred upon this Court by §301 of the LMRA, 29 U.S.C. §185 and by 28 U.S.C. §1391.

THE PARTIES

3. Plaintiff Service, Hospital, Nursing Home and Public Employees Union, Local No. 47, affiliated with Service Employees International Union, AFL-CIO, CLC

(the Union or Local 47), is a labor organi-action within the meaning of §301 of the LMRA, 29 U.S.C. §185.

4. Local 47 is the sole and exclusive bargaining agent for all janitorial employees who are engaged in janitorial work at the two buildings located at Rockwell and East Sixth Street in Cleveland, Ohio (Rockwell-Sixth Buildings) and at the Illuminating Building, 55 Public Square, Cleveland, Ohio. Local 47 represents these employees for the purpose of collective bargaining with respect to rates of pay, wages, benefits and all other terms and conditions of employment.

5. Defendant Commercial Property Services, Inc. (CPS) is an Ohio corporation having its principal place of business at 3416 Prospect Avenue, Cleveland, Ohio 44115. It is an employer engaged in an industry affecting commerce within the meaning of §301 of the LRMA [sic], 29 U.S.C. §185.

6. Defendant Cleveland Cleaning and Maintenance Company (CCM) is an Ohio corporation having its principal place of business at 4838 East 355th Street, Willoughby, Ohio 44094. It is an employer engaged in an industry affecting commerce within the meaning of §301 of the LMRA, 29 U.S.C. §185.

7. Defendant Total Systems Management, Inc. (TSM), is an Ohio corporation having its principal place of business in Cleveland, Ohio. It is an employer engaged in an industry affecting commerce within the meaning of §301 of the LMRA, 29 U.S.C. §185.

8. Defendant Antares, Inc. (Antares) is a Pennsylvania corporation, which does business in the State of Ohio, in part at 3416 Prospect Avenue, Cleveland 44115. Antares is the parent corporation of Defendants Commercial Property Services, Inc., and Total Systems Management, Inc.

Antares is an employer engaged in an industry affecting commerce within the meaning of §301 of the LMRA, 29 U.S.C. §185.

9. Defendant First Union Management, Inc. (First Union), operates and manages commercial properties, including the Rockwell-Sixth Buildings and the Illuminating Building. First Union has its principal place of business in the Illuminating Building. First Union is an employer engaged in an industry affecting commerce within the meaning of §301 of the LMRA, 29 U.S.C. §185.

FIRST CAUSE OF ACTION

10. The allegations contained in paragraphs one through nine of this Amended Complaint are hereby restated and re-alleged as if fully rewritten.

11. Defendants CPS, CCM, TSM and Antares are alter egos of one another, despite their facial separateness because

they possess substantially identical management, business purpose and operation and because of an absence of arms' length relationship between them.

12. Local 47 and CPS are parties to a Collective Bargaining Agreement which governs the rates of pay, wages, benefits and all other terms and conditions of employment of CPS' employees engaged in janitorial work. That Agreement includes as an Employer party, any Employer engaged in janitorial work operated in whole or in part by an officer, director, or employee of CPS, and any Employer engaged in the janitorial work in which an investor in CPS has any interest of any kind.

13. By virtue of the terms of the Agreement referred to in paragraph 12, and because of its alter ego status to CPS, CCM is bound by the Collective Bargaining Agreement executed by CPS and it must fulfill CPS's collective bargaining and statutory obligations, responsibilities and duties.

14. Local 47 is a party to several Collective Bargaining Agreements with the employers who currently contract with First Union to provide janitorial services at the Rockwell-Sixth Buildings and at the Illuminating Building. The Agreements govern the rates of pay, wages, benefits and all other terms and conditions of employment for employees engaged in janitorial work at these locations.

15. The Agreement described in paragraph 12 contains a job protection provision which provides that an Employer which takes over an account at which the employees were represented by Plaintiff shall retain those employees and further provides that:

> When an Employer takes over an account at which employees represented by the Union were previously employed, regardless of who was the Employer, the terms of compensation, or the number of employees and their hours of work, or change the starting and quitting times of any employee

on that account without the express written consent of the Union, unless one of the exceptions set forth in Section 2 of this Article may be applied.

The Employer shall not reduce the rate of pay, other terms of compensation, the number of employees or the total number of hours assigned, or change the starting and quitting times of any employee at any individual account or job site from what they were on the effective date of this Agreement, without the express written consent of the Union.

16. Under the Agreement described in paragraph 12, the parties have a right to initiate grievances should any differences arise between the employer and the Plaintiff as to the meaning or application of the provisions of the Collective Bargaining Agreement. The Agreements provide for a grievance procedure which culminates in final and binding arbitration. Copies of the Agreement's grievance and arbitration provisions are attached as Exhibit A.

17. On or about February, 1983, Local 47 discovered that CPS had trans-

ferred janitorial work at a minimum of five (5) locations from employees represented by Local 47 to operations under its alter ego, CCM. CCM did not retain the employees represented by Local 47; it has treated employees as if they were not represented by Local 47 and not covered by Collective Bargaining Agreements between CPS and Local 47 and has unilaterally changed, eliminated or reduced wages, benefits and terms and conditions of employment. The transfer has been conducted at locations where the work had previously been performed by CPS under the CPS Agreements and at locations where the work was previously performed by other employers who were under contract with Local 47 as the exclusive representative of their janitorial employees.

18. Because of this conduct, on or about February 7, 1983, Local 47 initiated

a grievance against CPS pursuant to the grievance and arbitration provisions of the relevant Agreements charging CPS/CCM with violations of the provisions of the Agreement described in paragraph 12. (A copy of the letter initiating the grievance is attached as Exhibit B.)

19. Local 47 discovered that a similar transfer of work was scheduled to take place on February 13, 1983, for the janitorial services performed at the Rockwell-Sixth Buildings. The janitorial work at these buildings has been performed by employees of an employer which is a signatory to an Agreement with Local 47.

20. Local 47 also discovered that a similar transfer of work is scheduled to take place on February 27, 1983, for the janitorial services performed at the Illuminating Building, 55 Public Square, Cleveland, Ohio. The janitorial work at these buildings has been performed by

employees of an employer who is a signatory to an Agreement with Local 47.

21. First Union knew that CPS had Collective Bargaining Agreements with Local 47 which would cover the wages and terms and conditions of employees working at the Rockwell-Sixth Buildings and at the Illuminating Building. First Union also knew that the employers who currently contract with First Union to provide janitorial services at these locations have collective bargaining agreements with Local 47 which cover the wages and terms of conditions of employees working at the Rockwell-Sixth Buildings and at the Illuminating Building.

22. In spite of this knowledge First Union negotiated a contract or Agreement with CPS and CCM which would require CPS to breach the collective bargaining agreements it had with Local 47.

23. Pursuant to the [grievance] and arbitration procedures of the Agreement,

on or about February 7, 1983, Local 47 initiated a grievance concerning the conduct of CPS and CCM described in paragraphs 17 and 18 above. Local 47 sent CPS a letter requesting that CPS enter into an Agreement by 10:00 A.M. February 9, 1983 to abide by its Collective Bargaining Agreements with Local 47 pending arbitration. (A copy of said letter is attached as Exhibit B.) CPS has not responded to the letter.

24. The grievance described in paragraph 18 of this Amended Complaint involves the conduct which has already taken place. The grievance described in paragraph 23 of this Amended Complaint involves conduct which is scheduled to take place on February 13, 1983 and February 27, 1983. CPS and CCM have refused to arbitrate either of these grievances.

25. Unless enjoined and restricted by this Court, CPS and CCM will continue to fail and to refuse to abide by the Agreement, including refusing to arbitrate the grievances. CPS and CCM will not retain the employees who are presently performing janitorial work at the Rockwell-Sixth Buildings and at the Illuminating Building; such employees will not be provided with health and medical insurance coverage, will not receive pension credits or any other benefits which they are entitled to receive pursuant to the Agreements. CPS and CCM will further unilaterally reduce and change wages, benefits and terms and conditions of employment at those locations.

26. Unless enjoined First Union will continue to aid and to participate with CPS and CCM in avoiding the obligations, duties, and responsibilities CPS and CCM have pursuant to the Agreements; First Union will cancel any contracts with employers who are

subject to a Collective Bargaining Agreement with Local 47. First Union will change janitorial contractors pending arbitration; its actions will make a hollow formality of the arbitral process and will render a subsequent arbitrator's award a practical nullity.

27. As a result of the Defendants contemplated actions, Plaintiff and the employees it represents will suffer severe and irreparable injury for which they have no adequate remedy at law.

SECOND CAUSE OF ACTION

28. The allegations contained in paragraphs 1 through 27 of this Amended Complaint are hereby restated and realleged as if fully rewritten.

29. Defendant CCM is engaged in business similar to and in competition with that of Defendant CPS and other Union cleaning companies.

30. First Union knew that Plaintiff had collective bargaining agreements with the employers who currently contract wth [sic] First Union to provide janitorial services at the Rockwell-Sixth Buildings, as previously described in paragraph 21 of this Amended Complaint.

31. First Union had notice and knowledge of CCM's alter ego status to CPS; First Union had notice and knowledge that CCM was bound by the Collective Bargaining Agreements executed by CPS and that CCM must fulfill CPS' collective bargaining and statutory obligations, responsibilities and duties.

32. On or about February, 1983 First Union wrongfully, intentionally and maliciously interfered with said Agreements by retaining CCM to clean the aforesaid buildings.

33. As a direct result of these acts of First Union, Plaintiff's Agreements with

CPS and other Union employers were violated, repudiated and breached on and after February, 1983, and will continue to be violated, repudiated and breached on February 13, 1983 and February 27, 1983.

34. At all times herein mentioned, Plaintiff duly performed all the conditions of the Agreements on its part.

35. By reason of these acts of First Unión, the employees which Plaintiff represents have been deprived of employment, wages, and other benefits and income.

36. By reason of these acts of First Union, justice and the public good require that in addition to any damages to which Plaintiff is entitled, Plaintiff is also entitled to an amount which will serve to punish First Union and to deter it and others from the commi sion of like offenses.

WHEREFORE, Plaintiff prays that this Court grant judgment as follows:

A. Issue a temporary restraining order, preliminary injunction and permanent injunction enjoining, prohibiting, and requiring Defendants Commercial Property Services, Inc., Cleveland Cleaning and Maintenance Company, Total Systems Management, Inc. and Antares, Inc., their officers, agents, employees, attorneys, all persons in active concert or participation with them, and all persons having notice of this Order to arbitrate the grievances filed by Service, Hospital, Nursing Home and Public Employees Union, Local No. 47, affiliated with the Service Employees International Union, AFL-CIO, CLC, on February 7, and pending arbitration and compliance with the relief, if any, ordered by an arbitrator, from:

1. Discharging the employees currently performing janitorial work at the two buildings located at Rockwell and East Sixth Streets in Cleveland, Ohio and at

the Illuminating Building, 55 Public Square, Cleveland, Ohio, except as permitted under the current Agreements between Commercial Property Services, Inc. and Plaintiff;

2. Changing any of the wages, hours, or the terms and conditions of employment of said employees, except as permitted under the current Agreement's between Commercial Property Services, Inc. and Plaintiff; and

3. Reinstate any of said employees already discharged.

B. Issue a temporary restraining order, preliminary injunction and permanent injunction, enjoining and prohibiting Defendant First Union Management, Inc., its officers, agents, employees, attorneys and all persons in active concert or participation with it and all persons having notice of this Order, pending arbitration of the grievance filed on

February 7, 1983, by Service, Hospital, Nursing Home and Public Employees Union, Local No. 47, affiliated with the Service Employees International Union, AFL-CIO, CLC, and pending compliance with the relief, if any, ordered by an arbitrator, from:

1. Taking any action which results in the discharge or failure to reinstate the employees represented by Local 47 who are or were engaged in janitorial work at the two buildings located at Rockwell and East Sixth Streets in Cleveland, Ohio and at the Illuminating Building, 55 Public Square, Cleveland, Ohio, change any of the wages, hours, or the terms and conditions of employment of said employees, except as permitted under the collective bargaining agreement covering said employees except if First Union Management, Inc. establishes an independent basis which is not related to a requirement to have janitorial work per-

formed at the buildings by employees whose terms and conditions of employment are guaranteed through a Collective Bargaining Agreement with the Plaintiff;

C. Judgment against Defendant First Union for compensatory damages in the amount of $1,000,000.00.

D. Judgment against Defendant First Union for punitive damages in the amount of $2,000,000.00.

E. Order paid to Plaintiff an amount equal to costs and expenses incurred in this action, including, but not limited to, reasonable attorneys fees;

F. All such other and further relief which this Court deems appropriate.

SCHWARZWALD, ROBINER, WOLF & ROCK - A legal Professional Association

/s/ Melvin S. Schwarzwald
MELVIN S. SCHWARZWALD
STEVEN B. POTTER
616 Bond Court
1300 East Ninth Street
Cleveland, Ohio 44114
(216) 566-1600

Attorneys for Service, Hospital, Nursing Home and Public Employees Union, Local 47, AFL-CIO, CLC

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Amended Complaint were served upon Robert T. Rosenfeld, Attorney for Commercial Property Services, Inc. and Total Systems Management, Inc., at Rosenfeld and Gross, 1326 Terminal Tower, Cleveland, Ohio 44113, Keith Ashmus, Attorney for First Union Management, Inc., at Thompson, Hine and Flory, 1100 National City Bank Building, Cleveland, Ohio 44114, and Eugene Schwartz, Attorney for Cleveland Cleaning and Maintenance Co., Inc., at Schwartz, Einhart & Simerka, 800 National City Bank Building, Cleveland, Ohio 44114-3082, by personal or mail service, and on Patrick Cassese, 3416 Prospect Avenue, Cleveland, Ohio 44115, by regular mail service, postage prepaid, this 22nd day of February, 1983.

/s/ Melvin S. Schwarzwald
Melvin S. Schwarzwald
Steven B. Potter
Attorneys for Service, Hospital, Nursing Home and Public Employees Union, Local No. 47, affiliated with the Service Employees International Union, AFL-CIO, CLC

Q And all the shares were initially issued to you; is that right?

A Correct.

Q Prior to the incorporation, did anyone other than you have any monetary interests, ownership interest in Cleveland Cleaning & Maintenance prior to the time of your incorporation?

A No, they didn't.

Q Showing you what has been marked as Plaintiff's Exhibit G, could you tell us what that it, please?

A This is a sheet from the share ledger when Pat Cassese and I entered into an agreement showing that he took over 35 shares of stock and I retained 15.

Q Now, sir, was there some compensation paid by Mr. Cassese for that agreement?

A I believe the corporate record book shows that there was a sale of stock for $350.

Q Did Mr. Cassese loan any money to the corporation at that time?

A After entering into an agreement, yes, he did provide a loan to the company.

Q And how much was that loan?

A He gave us a loan for $4,000 that I signed...

No. 85-243

Supreme Court of the United States

October Term, 1985

AUG 29 1985
JOSEPH F. SPANIOL, JR.
CLERK

SERVICE, HOSPITAL, NURSING HOME & PUBLIC EMPLOYEES UNION, LOCAL NO. 47, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC,

Petitioner,

vs.

COMMERCIAL PROPERTY SERVICES, INC.; CLEVELAND CLEANING AND MAINTENANCE COMPANY; TOTAL SYSTEMS MANAGEMENT, INC.; ANTARES, INC.; AND FIRST UNION MANAGEMENT, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT T. ROSENFELD
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(216) 771-4180

BEST AVAILABLE COPY

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—TEL. (216) 771-2345

QUESTION PRESENTED FOR REVIEW

Whether in an action brought under Section 301 of the LMRA, 1947, 29 U.S.C. §185, a non-signatory to a collective bargaining contract may be compelled to arbitrate a dispute arising under that contract without a judicial determination that the non-signatory is bound by the contract to so arbitrate.

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No. 85-243

Supreme Court of the United States

October Term, 1985

SERVICE, HOSPITAL, NURSING HOME & PUBLIC EMPLOYEES UNION, LOCAL NO. 47, AFFILIATED WITH THE SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO, CLC,

Petitioner,

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATUTE INVOLVED

United States Code, Title 9, "Arbitration"

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the

parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

July 30, 1947, c. 392, 61 Stat. 671; Sept. 3, 1954, c. 1263, § 19, 68 Stat. 1233.

STATEMENT OF THE CASE

On February 22, 1983, the Petitioner, Service, Hospital, Nursing Home and Public Employees Union, Local 47 ("Union" or "Petitioner" or "Local 47") filed an amended complaint against Respondents, Cleveland Cleaning and Maintenance Company ("CCM"), Total Systems Management ("TSM"), Antares, Inc.,[1] and against Commercial Property Services, Inc. ("CPS") and First Union Management ("First Union") (not parties to the instant proceeding in this Court) demanding that all five entities arbitrate certain grievances previously filed by the Union against CPS and CCM.

On September 21, 1983, the District Court for the Northern District of Ohio issued its decision ordering CPS and CCM to arbitrate, and dismissed the complaint as it pertained to TSM and Antares. The complaint had previously been dismissed as to First Union.

CPS and CCM appealed the September 21 order and the Union appealed the order of dismissal as to TSM, Antares and First Union.

On February 21, 1985, the Sixth Circuit Court of Appeals at 755 F.2d 499, sustained the lower court's dismissal orders as to TSM, First Union and Antares, sustained the order to arbitrate as to CPS (the signatory employer) and reversed and remanded the order as to CCM (the non-signatory), directing the Court on remand to determine whether CCM was an alter ego of CPS, a single employer with CPS or whether some other reason existed to pierce the corporate veil surrounding CCM.

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1. The Respondents, Commercial Property Services, Inc., Total Systems Management, Inc. and Antares, Inc., list the following subsidiaries, affiliates and joint ventures, not otherwise named, pursuant to United States Supreme Court Rule 28.1:

Commercial Protective Services, Inc.

Mercury West, Inc.

The Union has petitioned this Court to review the Sixth Circuit's Order as to CCM, TSM and Antares.

STATEMENT OF FACTS

CPS is an Ohio corporation formed in 1974 by Patrick J. Cassese and others and is engaged in janitorial cleaning services for commercial buildings. While CPS operates nationally, only the Cleveland, Ohio, office is involved in these proceedings. Since its inception, CPS has recognized the Union as the representative of its janitorial employees in the Greater Cleveland area. CPS and Local 47 have been parties to successive collective bargaining agreements, the most recent of which was effective from May 1, 1981, to April 30, 1984.

Cassese is the Chairman of the Board, President and Chief Executive Officer of CPS. Cassese owned 49 percent of the stock of CPS, while twelve other partners owned the remaining 51 percent until November, 1982, when their stock was acquired by Antares.

TSM is a wholly-owned subsidiary of CPS formed in 1978 to serve as a management consulting company for small building owners. Janitorial workers were not employed by TSM, but rather were provided by subcontractors. TSM has not conducted any business since June, 1982.

Antares, a Pennsylvania corporation, was formed by Cassese in November, 1982, for the purpose of purchasing the stock of his partners in CPS. In this manner, Cassese became the owner of 100 percent of Antares, which in turn owns 100 percent of CPS. Antares has not at any time employed janitorial workers and has no assets except for the stock of CPS.

CCM was purchased by Jack Cornachio from his uncle in 1976 as a non-union janitorial service business servicing only buildings located in Greater Cleveland. Cornachio and Cassese are not related.[2] CCM held subcontracts with TSM in addition to securing its own cleaning contracts with small building owners.

In October, 1982, Cassese purchased 70 percent of the CCM stock from Cornachio. Cornachio retained 50 percent of the CCM voting control pursuant to an irrevocable ten-year proxy given to him by Cassese.

Cornachio continued as President and operational manager of CCM as he had been prior to the stock sale. Cassese's interest in CCM was limited to stock dividends and loan interest, not to CCM profits or salaries. The Cornachio-Cassese financial agreement was consummated at a time when Cassese held a minority interest in CPS prior to the formation of Antares.

CCM is a non-union operation centered in the Greater Cleveland area. CCM has competed with CPS for janitorial accounts. Its bookkeeping, banking and accounting firms are separate from those of CPS. The officers, directors and employees of each company are distinct. The offices of the two companies are separated by approximately twenty miles. Since Cassese's purchase of CCM stock, the daily and overall operations of each company have remained unchanged.

First Union Management, Inc. (hereinafter referred to as First Union) operates and manages downtown Cleveland properties as well as other buildings owned by First Union Real Estate Investments. First Union hires contractors to provide cleaning services in the various prop-

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2. The Circuit Court at 755 F.2d 502 erroneously referred to Cassese as Cornachio's uncle.

erties and buildings it manages, including the Illuminating Building and Rockwell properties in Cleveland.

Prior to February, 1983, the Illuminating Building had been cleaned by Local 47 employees employed by National Cleaning Contractors ("National") under a "site contract" between National and Local 47. The Rockwell Building had been cleaned by Local 47 members employed by National under a multi-site agreement similar to Petitioner's Exhibit A.

In December, 1982, First Union accepted bids from CPS, National and other Cleveland area Union and non-union contractors, including CCM, for the janitorial cleaning of the Rockwell and Illuminating Buildings as separate accounts. CCM was awarded the contracts at both buildings, effective in February, 1983. CCM hired its own work force to staff the buildings, none of whom were members of Local 47. National laid off its Local 47 employees when it lost the First Union accounts.

On February 7, 1983, the Union presented grievances to CPS President Cassese (Petitioner's Exhibit B). These grievances asserted that CCM was the alter ego of CPS, and therefore CCM violated the work preservation provisions of the contract in effect between CPS and the Union by taking over various cleaning accounts, including the Rockwell and Illuminating Buildings, and not hiring the former National employees. The Union also alleged that CCM was an Employer under Article XXI of the CPS collective bargaining agreement (Petitioner's Exhibit A) because of its alleged financial relationship with Cassese.

The grievances demanded that CCM retain the former Union employees under the work preservation clauses of Local 47 contracts. CCM refused to arbitrate the grievance on the ground that it was not a signatory to the CPS-Local 47 contract, and thus not bound thereby. CPS refused to

arbitrate on the grounds that the employees were not CPS', nor had it acquired the First Union accounts. No grievance was ever filed against TSM, Antares or First Union.

ARGUMENT

The Union would have the Court order CCM, TSM and Antares, which are not signatory to a contract, to arbitrate a dispute by virtue of another entity, CPS, agreeing that they were bound to so arbitrate. No reported case supports such a proposition, and the proposition itself is contrary to the entire concept of arbitration, i.e., a voluntary, *contractual* method of resolving disputes.

Arbitration is a matter of contract and a party cannot be required to submit to arbitration any dispute which he has not agreed to submit. *United Steel Workers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960); *Gateway Coal Co. v. UMW*, 414 U.S. 368, 374 (1974); *John Wiley & Sons v. Livingston*, 376 U.S. 543, 547 (1964); *Atkinson v. Sinclair Refining*, 370 U.S. 238, 241 (1962); *Carpenters Local 1846 v. Pratt-Farnsworth*, 690 F.2d 489, 501 (5th Cir. 1982), *cert. denied* 78 L. Ed. 2d 305 (1983).

"Nothing we say here diminishes the responsibility of a court to determine whether a union and employer have agreed to arbitration. That issue as well as the scope of the arbitration clause remains a matter for judicial decision." *Int. Union of Operating Engineers Local 150 v. Flair Builders*, 406 U.S. 487, 491 (1972).

> "If [the union's] position were upheld, it would do violence to the judicial process by forcing a stranger to an agreement to submit to arbitration a justiciable issue as to whether he is bound by the agreement." *Office Employees Int. Union Local 153 v. Ward-Garcia Corp.*, 190 F. Supp. 448, 449 (1961).

This view is also expressed by the U. S. Arbitration Act, 9 U.S.C. §4, "If the making of the arbitration agreement . . . be in issue, the court shall proceed summarily to the trial thereof. . . . If the jury find that no agreement in writing for arbitration was made . . . the proceeding shall be dismissed."

The principles of labor law and arbitration enunciated by the Sixth Circuit follow not only the procedures clearly set forth by this Court and by the statute, but also agree with decisions from other circuits which have ruled on the subject. *General Drivers, Warehousemen and Helpers, Local Union No. 89 v. Public Service Company of Indiana,* 705 F.2d 238 (7th Cir. 1983); *Las Vegas Joint Council v. Las Vegas Hacienda, Inc.,* 383 F.2d 667 (9th Cir. 1967), *cert. denied* 390 U.S. 958, 19 L. Ed. 2d 1153 (1968); *Pratt-Farnsworth, supra; American Bell v. Telephone Workers,* 736 F.2d 879 (3rd Cir. 1984).

It must be remembered that the Union's grievance has not been dismissed. CPS has been ordered to arbitrate. If the District Court finds that CCM is bound by the CPS contract to arbitrate, then indeed the Union will have its desired remedy against CCM—arbitration. If however, CCM is not found to be an alter ego, then its conduct in acquiring the First Union accounts, and hiring of employees, is to be governed by *NLRB v. Burns Security Services,* 406 U.S. 272 (1972) (a successor employer is free to hire its initial work force and is not obligated to assume the predecessor's labor contract) and by *Howard Johnson Co. v. Detroit Local Joint Executive Board,* 417 U.S. 249 (1974) (a successor may not be compelled to arbitrate its obligations to its predecessor's employees).

For the reasons set forth in the Court of Appeals Decision, 755 F.2d at 507, TSM and Antares were properly dismissed.

CONCLUSION

In a suit brought under Section 301(a) of LMRA to compel arbitration pursuant to a collective bargaining contract, the District Court only has jurisdiction over a party to the contract.

Whether one is a party or otherwise bound to the contract is a matter for the Court, not the arbitrator, to decide.

This Court has unwaiveringly followed that principle. The Sixth Circuit, pursuant to *Howard Johnson*, correctly reversed the District Court order in this regard, and remand is proper to factually determine whether CCM is the alter ego of CPS, or whether CPS and CCM constitute a single employer or whether some other circumstance exists which would warrant piercing CCM's corporate veil to give §301 jurisdiction over CCM.

Respectfully submitted,

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